



G L O B A L
INTELLECTUAL PROPERTY
C E N T E R

March 24, 2010

The Honorable Victoria Espinel
U.S. Intellectual Property Enforcement Coordinator
Office of Management and Budget
The White House
Washington, DC 20500

Re: Coordination and Strategic Planning of the Federal Effort Against Intellectual Property Infringement: Request of the Intellectual Property Enforcement Coordinator for Public Comments Regarding the Joint Strategic Plan (Federal Register Volume 75, Number 35 – FR Doc. 2010-3539)

Dear Ms. Espinel:

The U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses and organizations of every size, sector, and region, and its Global Intellectual Property Center (GIPC) are pleased to submit the following comments in response to the Office of Management and Budget's request for comments regarding the Intellectual Property Joint Strategic Plan.

These comments supplement the previous letters sent to the Administration on this issue—including the February 16, 2010 letter to President Obama and the January 14, 2010 letter to your office, enclosed herein.

The U.S. Chamber of Commerce's Global Intellectual Property Center (GIPC), representing a broad spectrum of intellectual property (IP)-intensive companies, is dedicated to protecting and promoting the ideas and ingenuity that serve as key engines of job creation, competitiveness, and economic growth for the United States. Accordingly, GIPC looks forward to working with you, your office, and the rest of the administration to strengthen IP rights and laws internationally, and to promote their well-resourced, coordinated, and vigorous enforcement in the U.S. and abroad.

PART I – COMMENTS ON THE THREAT POSED BY IP THEFT

As you well know, innovation, technical invention and creativity are the primary drivers of U.S. global competitiveness. However, America's ability to compete in the global marketplace is

increasingly threatened by a tidal wave of infringing activity—including counterfeiting and piracy in both the physical and online environments—that diverts the benefits of innovation and creativity from its proper beneficiaries into the coffers of criminals. In addition, foreign governments increasingly allow and even encourage unwarranted exceptions to IP laws and norms that weaken companies’ ability to innovate. Lastly, an Internet culture that views online piracy and the willful trafficking in counterfeit goods as tolerable, if not acceptable, threatens to undermine our IP-intensive industries, their employees, and consumers around the world. America’s business sectors invest heavily in technical and other measures to prevent and investigate intellectual property theft, and convince foreign governments of the benefits of IP protection. But, the private sector can only do so much. Strong IP enforcement efforts and sound IP policies in the United States and abroad are essential to advancing global economic recovery and creating high-quality American jobs.

Currently, IP-based industries account for more than \$5 trillion of the U.S. GDP,¹ account for more than half of our exports,² and employ over 18 million Americans.³ On the other hand, counterfeiting and piracy is estimated to cost the American economy hundreds of billions of dollars annually and has cost the U.S. economy hundreds of thousands of jobs.

In addition to the economic cost, IP theft poses a health and safety threat that presents a clear and increasing danger to the public, from counterfeit toothpaste and medicines laced with antifreeze to exploding batteries and other dangerous consumer goods. Indeed, even test strips for diabetes are being counterfeited and sold as legitimate, with obvious life-threatening results. Sectors where IP theft threatens health and safety include; automobile parts, airplane parts, food, medical devices, medical supplies, electrical supplies, pharmaceuticals and many more.

IP theft is also the new face of organized crime. Organized crime goes where the money is, and today that means counterfeiting and piracy, where criminals can engage, with minimal risk, in high-value commerce such as manufacturing millions of bootleg DVDs or bottles of counterfeit medicine.⁴

It is difficult to pick up a newspaper or go online these days without seeing headlines about counterfeit toys, dog food, razors, pharmaceuticals, even aircraft parts. Counterfeiting and piracy are no longer just a chronic problem: they are an acute and growing crisis.

¹ Robert J. Shapiro and Kevin A. Hassett, “The Economic Value Of Intellectual Property,” USA For Innovation, 10/05.

² U.S. Department Of Commerce, “Bush Administration Officials Update Congress On Intellectual Property Enforcement Efforts,” Press Release, http://www.commerce.gov/NewsRoom/PressReleases_FactSheets/DEV01_005326, 7/26/06.

³ U.S. Department Of Commerce, “Secretary Of Commerce Carlos M. Gutierrez Opinion Editorial,” Press Release, http://www.commerce.gov/NewsRoom/PressReleases_FactSheets/PROD01_005990, 5/11/08.

⁴ For more information on the connection between counterfeiting and piracy and organized crime, please see: Gregory F. Treverton, Carl Matthies, Karla J. Cunningham, Jeremiah Goulka, Greg Ridgeway, and Anny Wong, *Film Piracy, Organized Crime, and Terrorism*, http://www.rand.org/pubs/monographs/2009/RAND_MG742.pdf, 2009.

PART II – RECOMMENDATIONS FOR THE JOINT STRATEGIC PLAN

GIPC Priorities

Fully Implement the PRO-IP Act (PL 110-403)

Among the important core provisions of the PRO-IP Act were those that created the position of U.S. Intellectual Property Enforcement Coordinator (IPEC) within the Executive Office of the President. GIPC applauded the administration for your appointment as the nation's first IPEC. We believe you are eminently qualified for the important task of ensuring the nation's IP policy supports American jobs, innovation and creativity, while coordinating and streamlining the IP activities of various departments and agencies. In 2010, the administration should ensure that you and your office have the requisite authority, budget and staff to successfully carry out your duties.

Chief among those tasks is coordinating the development of a first-ever, government-wide, joint strategic plan for intellectual property—of which this Federal Register Notice (FRN) is an important first step. GIPC sees the development of this cohesive national strategy to better promote and defend IP as a unique opportunity to highlight the importance of IP rights, innovation, and creativity, while also maximizing the effectiveness and efficiency of federal IP enforcement efforts. As such, we are encouraged that the administration has engaged industry and other stakeholders through this FRN and urge you to continue such engagement as you and your office develop and present this summer the most comprehensive and effective strategy possible.

The PRO-IP Act also recognized that criminal enforcement of IP laws should be among the highest priorities of the Department of Justice (DOJ). The Act requires DOJ to dedicate personnel to the investigation and prosecution of IP crimes and authorizes federal resources to help fund state and local IP enforcement efforts. DOJ has already taken important steps toward implementing these requirements under the law, and GIPC encourages DOJ to continue building on these efforts and stands ready to support them.

Preserve A Strong International IP Legal Framework

The protection of intellectual property rights abroad is also essential to promoting the growth of our IP-intensive industries, in particular, and increasing our broader economic competitiveness more generally. It is important that the administration continue to promote and defend a robust international system of IP laws and norms, from protecting these rights in international fora such as the World Intellectual Property Organization, to advancing agreements, such as the pending U.S.-Korea Free Trade Agreement and the proposed Trans-Pacific Partnership agreement, with strong IP protection and enforcement provisions.

We also encourage the administration to oppose any efforts—such as those to impose unwarranted exceptions to patent, trademark, and copyright protections—to weaken IP rights in international institutions. For example, we urge the administration to remain vigilant in future

United Nations climate change negotiations to avoid any weakening of IP rights, which are critical to incentivizing investments and creating the innovations needed to address global problems.

Fight Online Counterfeiting and Piracy

The Internet has transformed society, revolutionized the global economy, and deeply affected Americans' daily lives—including how they receive information, purchase goods and services, and access entertainment. The Internet has been one of the most important and innovative developments over the last century, and the prospect of greater access at faster speeds will undoubtedly continue to shape our world in the coming years.

Notwithstanding its many benefits, the emergence of the Internet and new online technologies has also fueled an explosion in IP theft that not only poses a risk to consumer health and safety through the sale of faulty and dangerous products, but also severely undermines sectors of our economy that have historically provided secure, high-paying jobs. Indeed, the rampant theft of movies, music, books, television programming, games, software and other digital content is threatening the ability of U.S. companies to increase investment and hire additional workers in these industries—sectors in which America has been a world leader, and through which the international community has come to know our country. As such, the GIPC and its members are eager to work with the administration to examine this problem and consider new and creative efforts to fight counterfeiting and piracy in the online environment.

As part of this effort, it is critical that the administration: (1) develop broadband policies and regulations that preserve the right of Internet Service Providers to use reasonable methods and effective tools to prevent the distribution of illicit content; and (2) support voluntary partnerships between content owners and ISPs to explore commercial models to distribute lawful content and prevent the use of networks for the transmission of infringing materials. The administration's support for similar policies with other governments will also be important as they develop their broadband policies.

Conclude a Comprehensive Anti-Counterfeiting Trade Agreement

GIPC is encouraged by the administration's efforts to conclude an ambitious and comprehensive Anti-Counterfeiting Trade Agreement (ACTA). To ensure success, the agreement must build on existing international rules and norms, specifically the TRIPS agreement, and complement the IP provisions of current and pending free trade agreements, such as those with Oman and Korea. ACTA must include robust provisions to confront IP theft in both the physical and online environments, and incorporate effective and credible enforcement mechanisms. ACTA must not result in changes to US law.

Some have raised concerns about the transparency of the ACTA negotiations. While GIPC also supports transparency appropriate to government undertakings of this nature, this criticism risks shifting the focus away from the substance of the agreement and its value to our economy.

GIPC firmly believes that concluding an agreement in 2010 will help protect American jobs and stimulate the economy. Therefore, while bearing in mind the practical limitations involved in the negotiation of any agreement, we encourage the administration to continue to increase transparency to ensure this issue is not used as a justification for delay. Furthermore, we urge the administration to ensure that Congress continues to be fully briefed on the ACTA negotiations and why concluding this agreement is in the country's best interests.

Advance Key IP Issues in Specific Countries

Important IP issues trouble our members in numerous countries that are harming America's competitiveness and economic growth; the GIPC is focused on addressing a number of these IP issues in a few key countries. Processes such as USTR's annual Special 301 review of intellectual property protection and market access practices in foreign countries cast light on these challenges, which should also be addressed in interagency strategic planning efforts. For example, India's patent laws prevent many critical medicines from being patented, thereby discouraging the development of important new treatments and cures. Similarly, China's inadequate laws and systems governing regulatory data protection and patent linkage create an obstacle to innovation and a threat to rights holders. And lastly, piracy in and from China continues to do great harm to America's copyright-intensive industries. A concerted effort to address internet piracy, including preventing deep-linking to infringing files, and removing illegal content from and/or shutting down sites that host or provide access to infringing materials, would go a long way to addressing this problem.

At the same time, we also encourage the administration to strengthen cooperation with key trading partners to promote shared IP priorities and address all of these issues. In particular, we welcome efforts to enhance U.S.-European Union cooperation on IP matters, and believe that such cooperation at the highest levels, including to elevate levels of protection among our mutual trading partners, is essential to our economic growth.

Responses to Additional Questions Posed in the Federal Registry Notice

Below are GIPC's responses to several of the questions posed in the FRN. Many of the other questions were addressed in our previous letters—including the February 16, 2010 letter to President Obama and the January 14, 2010 letter to your office, enclosed herein.

Proposed legislative changes, regulations, executive action, guidelines, or changes in policies, practices or methods

Work with Congress on Legislation to Strengthen IP Protection and Enforcement

GIPC believes the administration should work with Congress to enact legislation that enables the federal government to better protect Americans' IP rights domestically and abroad. In July 2009, the "Customs Facilitation and Trade Enforcement Reauthorization Act of 2009," S. 1631, was introduced with important provisions to improve the capability of U.S. Customs and Border

Protection and Immigration Customs Enforcement to prevent counterfeit goods from entering the United States. We understand too that the House Ways and Means Committee is developing comparable legislation, which we hope will be introduced in the near future. GIPC strongly supports this legislation and hopes to see it enacted into law in 2010.

GIPC is also eager to work with Congress to enact legislation to improve the U.S. Trade Representative's "Special 301" process by enhancing the tools available to the administration to engage more effectively with nations that fail to respect or enforce the rights of America's innovators and live up to their international IP obligations. This legislation should require an action plan for Priority Watch List countries that includes clear benchmarks to measure performance and meaningful consequences, consistent with international trade obligations, for nations that fail to perform.

Finally, we encourage the administration to work with Congress to enact legislation that expands vital agency representation into additional countries abroad. Dedicated IP specialists, stationed at American embassies in select countries, are an important asset in helping address IP protection and enforcement issues. Given the success of the current IPLEC and IP attaché programs, GIPC urges Congress and the administration to work together this year to enact attaché provisions passed by the House in 2009 as part of H.R. 2410, the Foreign Relations Authorization Act.

9. Suggest how state and local law enforcement authorities could more effectively assist in IP enforcement efforts, including whether coordination could be improved, if necessary, and whether they should be vested with additional authority to more actively participate in prosecutions involving IP enforcement.

State and local law enforcement play an important role in the fight against counterfeiting and piracy. Often state and local law enforcement is able to investigate and prosecute cases to which federal enforcement agencies are unable to dedicate resources. It is important that the federal government support these state and local efforts because they help preserve local economies, save jobs, and protect consumers.

Historically, the federal government has supported state and local law enforcement through federal funding. Specifically, one important way to support these efforts is to continue to provide grant funding for state and local IP enforcement. In FY 2009, the Office of Justice Programs (OJP) distributed \$2.9 million for these purposes. These funds were an important step and have gone a long way to helping jurisdictions around the country to build and maintain effective IP enforcement initiatives. In FY 2010, Congress appropriated \$20 million towards economic, high technology and Internet crime prevention grants, including as authorized by section 401 of the PRO-IP Act. We urge the OJP to dedicate a significant portion of these funds to IP enforcement efforts. For FY

2011, we urge Congress to continue to build on these efforts by providing at least \$6 million for state and local IP enforcement initiatives.

Many jurisdictions have chosen to address IP enforcement through the creation of city-wide or state-wide task forces. The federal government should not only support and encourage such initiatives but consider establishing multi-jurisdictional task forces. This would be a force multiplier in combating IP crime and offer alternatives for prosecution and sentencing.

Federal enforcement agencies should support and participate in state and local training efforts whenever possible. A multi-jurisdictional approach to training is just as important as it is to investigations and prosecutions.

11. Suggest methods to improve the adequacy, effectiveness and/or coordination of U.S. Government personnel in other countries who are charged with enforcement of the intellectual property.

a. Department of Justice IP Law Enforcement Coordinator (IPLEC) program:

Because IP crime is often transnational, DOJ's work beyond the U.S. borders is critical to its success. The 2004 IP Task Force report made seven recommendations with respect to international cooperation: (i) deploy federal prosecutors as IPLECs; (ii) co-locate FBI legal attachés with the IPLECs; (iii) use informal channels to gather information quickly in foreign cases; (iv) enhance IP training for foreign prosecutors and agents; (v) focus on IP problem countries for legal assistance agreements; (vi) ensure IP crimes are covered in extradition treaties; and (vii) emphasize IP enforcement issues during discussions with foreign governments.

All these international efforts require increased resources, better training to make sure that IP enforcement is treated as a priority, and better coordination among the various parts of DOJ with international reach. This will require, for example, increasing the number of IPLECs in targeted countries (i.e., those countries listed on the Special 301 Priority Watch List); ensuring that the DOJ attachés are fully trained and able to devote adequate attention to IP cases; adequately resourcing the International Criminal Investigative Training Assistance Program and Overseas Prosecutorial Development, Assistance and Training Legal Advisors to provide IP enforcement training to agents and prosecutors, respectively; and ensuring that the FBI's legal attachés are properly trained and incentivized to work IP cases.

DOJ should place greater emphasis on international efforts and the reconstituted Task Force should develop a plan to integrate IP efforts among the overseas representatives of DOJ.

b. U.S. Patent and Trademark Office Intellectual Property attachés program:

Optimize the Effectiveness of IP Attachés. Since its inception in 2006, the IP attachés stationed in key markets around the world have been advocates on behalf of U.S. rights holders as dedicated staff that focus exclusively on IP issues. In early 2009, USPTO conducted a series of interviews with stakeholders on the IP attaché program. The results of this study should be used to adjust resources and activities accordingly to optimize the use of attachés.

Prepare Annual Plans. Each IP attaché should develop an annual IP strategy that covers both the trade and law enforcement sides of the Mission—with consultation from the private sector—promulgated by the head of mission. The IP attachés should be resourced appropriately and held responsible for implementation of this annual plan. These plans should fit into an overarching U.S. government IP strategy, as developed by the Intellectual Property Advisory Committee.

Increase Prominence within the Embassy. IP attachés should be an integrated part of the diplomatic team with sufficient resources and authority to implement their annual IP enforcement strategies and report to the head of mission. Ambassadors should regularly engage on IP issues with their attachés and local industry representatives.

Deploy Additional Attachés. Fund additional technical assistance to key governments for IP enforcement and establish and empower additional IP attachés at targeted U.S. embassies. The U.S. government should also deploy an IP attaché to the Organization for Economic Cooperation and Development (OECD).

g. Department of Homeland Security/Immigration and Customs Enforcement and Department of Homeland Security/Customs and Border Patrol attachés and other representatives:

Expand Resourcing and Utilization of ICE Attachés. On an on-going basis, provide IPR enforcement and other related training for all ICE attachés. Maximize use of attachés to train and work with foreign counterparts, effectively expanding our border enforcement to the source of counterfeit and pirated goods.

12. Suggest ways to improve the adequacy, effectiveness and/or coordination of the enforcement training and technical assistance provided by the U.S. Government.

USTR should submit to the IPEC and Intellectual Property Advisory Committee a list of Special 301 targets and trade negotiating partners where capacity building programs and technical assistance could significantly improve IP enforcement. This list should then be used to strategically deploy U.S. government IP training funds and assistance, such as through USPTO's Global Intellectual Property Academy. All U.S. government IP training dollars should be spent in a strategic and coordinated manner consistent with the broader U.S. government IPR strategy contained in the Joint Strategic Plan.

Thank you for this opportunity to share our perspectives on these important issues. The GIPC looks forward to working with you in the future.

Sincerely,

A handwritten signature in black ink that reads "Mark T. Esper". The signature is fluid and cursive, with the first letters of each name being capitalized and prominent.

Mark T. Esper, Ph.D.
Executive Vice President
Global Intellectual Property Center
U.S. Chamber of Commerce

Enclosures



G L O B A L
INTELLECTUAL PROPERTY
C E N T E R

January 14, 2009

The Honorable Victoria Espinel
United States Intellectual Property Enforcement Coordinator
The Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Dear Ms. Espinel:

On behalf of the Global Intellectual Property Center, which represents companies and associations from a wide range of business sectors, we offer our congratulations on your appointment as the United States Intellectual Property Enforcement Coordinator (U.S. IPEC). With your talent and experience, we are confident that you will excel in your capacity as the first U.S. IPEC, and we stand ready to assist you in every way we can as you shoulder your new responsibilities.

As you well know, innovation, technical invention and creativity are the primary drivers of U.S. global competitiveness. However, America's ability to compete in the global marketplace is increasingly threatened by a tidal wave of infringing activity—including counterfeiting and piracy in both the physical and online environments—that diverts the benefits of innovation and creativity from its proper beneficiaries into the coffers of criminals. In addition, foreign governments increasingly allow and even encourage unwarranted exceptions to IP laws and norms that weaken companies' ability to invent. America's business sectors invest heavily in technical and other measures to prevent and investigate intellectual property theft, and convince foreign governments of the benefits of IP protection. But, the private sector can only do so much.

Therefore, the business community must depend on our federal government to place a high priority on intellectual property promotion and enforcement, both domestically and as an advocate with our trading partners around the world. The 2008 PRO-IP Act established the U.S. IPEC position because a high-level IP-dedicated official inside the White House is critical to coordinating the work of the many agencies and departments that play a role in IP enforcement and promotion.

Unquestionably, the single most immediate and important challenge you face as you begin your service will be the development of the National IP Strategy with the Intellectual Property Advisory Committee (IPAC). The National IP Strategy will be viewed by global policy makers and the intellectual property community as a landmark statement of U.S. intentions

regarding the protection, promotion, and enforcement of intellectual property rights. As such, we also suggest that the National IP Strategy be used to identify a short list of priority objectives for next year, accompanied with specific and measurable goals. The National IP Strategy could also lead to an annual IP State of the Nation report that would highlight not only the immense and growing importance of intellectual property to America's competitiveness, economic health and job creation, but would also point out U.S. government successes in securing these valuable rights and priority areas where more needs to be done.

To assist you in the development of the National IP Strategy, we have asked our membership to address how each of the major departments and agencies of the U.S. government could enhance their role in the protection and promotion of IP rights. These suggestions, which are attached, emanate from experts who have been involved in IP for many years, a number of whom come from distinguished careers in government. We are also providing these suggestions to the individual departments and agencies.

We would welcome the opportunity to meet with you as soon as possible to discuss how we can be of assistance as you undertake this important challenge.

Sincerely,



David Hirschmann
President and Chief Executive Officer
Global Intellectual Property Center
U.S. Chamber of Commerce



Richard Cotton
Chairman
Global Intellectual Property Center
U.S. Chamber of Commerce

Enclosures

cc: The Honorable Joseph Biden, Vice President
The Honorable Hillary Rodham Clinton, Secretary of State
The Honorable Eric H. Holder, Jr., Attorney General
The Honorable Gary F. Locke, Secretary of Commerce
The Honorable Janet A. Napolitano, Secretary of Homeland Security
The Honorable Peter R. Orszag, Director of Office of Management and Budget
The Honorable Ronald Kirk, United States Trade Representative
The Honorable Robert S. Mueller, III, Director, Federal Bureau of Investigation
The Honorable David Kappos, Director, United States Patent and Trademark Office
The Honorable John T. Morton, Assistant Secretary for U.S. Immigration and Customs Enforcement, Department of Homeland Security

AGENCY-SPECIFIC OBJECTIVES

Department of Justice/FBI

We urge the Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI) to substantially enhance its vital role in IP enforcement in four areas: ensuring high-level leadership on IP; dedicating IP resources; boosting international efforts; and addressing organized crime.

Ensuring High-Level Leadership on IP:

Re-establish DOJ IP Task Force. In 2004, in recognition of the various and crucial roles DOJ plays in enforcing IP laws, DOJ created the “Task Force on Intellectual Property.” The Task Force was chaired by the Attorney General’s Deputy Chief of Staff and had high-level representation from all the relevant Divisions and Offices involved in the issue, including the Criminal, Civil, and Antitrust Divisions; Office of Legal Policy; Office of Legislative Affairs; Office of Legal Counsel; Executive Office for United States Attorneys; the Solicitor General’s Office; the FBI; and select U.S. Attorneys.

Later that year, the Task Force issued a series of wide-ranging and specific recommendations relating to criminal enforcement, international cooperation, civil enforcement, antitrust, and prevention. One such recommendation, for example, was for an increase in the number of FBI Special Agents and Assistant United States Attorneys (AUSAs) specifically assigned to IP investigations and prosecutions. In 2006, DOJ issued a progress report showing the successful implementation of the bulk of these recommendations, and all Attorney Generals since General Ashcroft have renewed and supported the Task Force, with Attorney General Mukasey appointing Deputy Attorney General Filip to personally lead the Task Force.

The Task Force became a central mechanism for coordinating the DOJ’s IP enforcement functions and will be even more important with the emphasis on inter-department coordination and cooperation through your appointment as the U.S. IPEC.

We are encouraged that the Attorney General has committed to reconstitute the Task Force, under senior DOJ leadership. We are hopeful that the task force will include representatives from the same offices as the original Task Force. The purpose of the Task Force should be to continually review and improve DOJ’s effectiveness in IP enforcement.

Appoint DOJ Representatives to the Intellectual Property Advisory Committee (IPAC).

The PRO-IP Act establishes an IPAC chaired by the U.S. IPEC. The statute calls for the IPAC to be comprised of “Senate-confirmed representatives of the various departments and agencies who are involved in intellectual property enforcement, and who are, or are appointed by, the respective heads of those departments and agencies.” The statute particularly notes that DOJ representation should include “relevant units within the Department of Justice, including the Federal Bureau of Investigation and the Criminal Division.”

The Attorney General should appoint the head of the IP Task Force, the Assistant Attorney General for the Criminal Division, and an appropriate FBI official to be the DOJ's representatives to the IPAC. The head of the Task Force should be responsible for formulating the DOJ's contribution to the overall strategic plan.

Dedicating IP Resources:

Assign IP-Dedicated FBI Agents to Assist Key Computer Hacking and Intellectual Property Units (CHIPs) and Computer Crime and Intellectual Property Section (CCIPS).

The PRO-IP Act recognized the importance of dedicating investigative and prosecutorial resources to IP because IP enforcement too often falls to the bottom when agents and prosecutors are juggling multiple priorities. Accordingly, the Act authorizes funding for at least one FBI agent to support each CHIP unit for the purpose of investigating or prosecuting intellectual property crimes, as well as funding for 10 agents at headquarters to support CCIPS. More immediately, the 2009 and 2010 Commerce, Justice, Science, and Related Agencies Appropriation bills allocated just under \$18 million for dedicated agents which includes no less than 26 IP-dedicated FBI agents to support CHIP units in key localities, and "at least 5 full-time, permanent agents dedicated to working with CCIPS solely on complex, multidistrict and international criminal IPR cases." \$2 million was also allocated for dedicated federal prosecutors in the 2010 appropriation bill.

The DOJ should support expansion of the program for dedicated agents and prosecutors in subsequent appropriations, and should work closely with industry and other law enforcement agencies to maximize the effectiveness of these agents. DOJ should develop a results-oriented performance matrix to evaluate the effectiveness of each agent.

Support State and Local Grants for IP Enforcement. DOJ should support expanded funding of state and local grant programs through the "Intellectual Property Theft and Infringement Crimes" (IP-TIC) grant program, administered through the Office of Justice Programs (OJP). DOJ should facilitate the formation of task forces with state and local units to focus on the manufacture and distribution of counterfeit and pirated products. As OJP develops its spend plan for the \$20 million appropriation for "for economic, high technology and Internet crime prevention grants" it should set aside no less than \$6 million for state and local IP enforcement efforts.

Boosting International Efforts:

Expand Intellectual Property Law Enforcement Coordinator (IPLEC) Program. Because IP crime is often transnational, DOJ's work beyond the U.S. borders is critical to its success. The 2004 IP Task Force report made seven recommendations with respect to international cooperation: (i) deploy federal prosecutors as IPLECs; (ii) co-locate FBI legal attachés with the IPLECs; (iii) use informal channels to gather information quickly in foreign cases; (iv) enhance IP training for foreign prosecutors and agents; (v) focus on IP problem countries for legal assistance agreements; (vi) ensure IP crimes are covered in extradition treaties; and (vii) emphasize IP enforcement issues during discussions with foreign governments.

All these international efforts require increased resources, better training to make sure that IP enforcement is treated as a priority, and better coordination among the various parts of DOJ with international reach. This will require, for example, increasing the number of IPLECs in targeted countries (i.e., those countries listed on the Special 301 Priority Watch List); ensuring that the DOJ attachés are fully trained and able to devote adequate attention to IP cases; adequately resourcing the International Criminal Investigative Training Assistance Program and Overseas Prosecutorial Development, Assistance and Training Legal Advisors to provide IP enforcement training to agents and prosecutors, respectively; and ensuring that the FBI's legal attachés are properly trained and incentivized to work IP cases.

DOJ should place greater emphasis on international efforts and the reconstituted Task Force should develop a plan to integrate IP efforts among the overseas representatives of DOJ.

Develop Coordinated Program to Attack Worldwide Copyright Piracy. DOJ focus on organized copyright piracy in the U.S. over the last several years has had an impact, driving most of the companies providing easy access to pirated materials overseas. Recent cases, such as the criminal prosecution of the principals of the Pirate Bay by Swedish authorities, demonstrates that these activities should not escape consequence by relocating. DOJ needs to develop a comprehensive and coordinated plan to attack the sites that host or link users to pirated materials by using its international resources to work with its counterparts in the countries in which the servers or entities are located. It should also consider discouraging the facilitation of such sites in a similar manner as it discourages the facilitation of Internet Gambling.

The Attorney General should task CCIPS and the FBI with developing and implementing a comprehensive plan to attack the major facilitators of copyright piracy.

Address the Connection Between Organized Crime and IP:

Develop long-term organized crime plan. The PRO-IP Act calls on DOJ to “create and implement a comprehensive, long-range plan to investigate and prosecute international organized crime syndicates engaging in or supporting crimes relating to the theft of intellectual property.” Recent revelations about the pervasive influence of organized crime in film piracy (see recent study by the Rand Corporation, available at <http://www.rand.org/news/press/2009/03/03/>) and other organized crime links to counterfeiting make this issue more pressing than ever.

DOJ should follow the Congressional directive and create the long-range plan on IP organized crime. We are encouraged by the addition of a CCIPS prosecutor to the IOC-II organized crime task force. This is definitely a step in the right direction.

Department of Homeland Security

Customs and Border Protection

We urge Customs and Border Protection (CBP) to enhance its vital role in IP enforcement in six areas: establishing high-level leadership; coordinating with other enforcement agencies - especially Immigration and Customs Enforcement (ICE); dedicating IP resources; improving port activities; collecting civil fines; and boosting international efforts.

Establishing High-Level Leadership:

The Commissioner of CBP should appoint a high-level coordinator for all of CBP's issues relating to IP enforcement who should serve on the IPAC.

Coordinating with Other Enforcement Agencies:

Improve the Engagement between CBP and ICE. Coordination between enforcement agencies is essential to the success of efforts to combat counterfeiting and piracy. CBP and ICE should work together to develop a department-wide strategic plan that includes specific performance measures of progress. CBP should also increase its cooperation with other federal, state, and local enforcement agencies.

Dedicating IP Resources:

Assign Dedicated Resources in Key Ports. Support authorization and appropriations for increased, dedicated CBP personnel at key ports. Train and deploy a cadre of CBP enforcement personnel whose primary training and responsibility is oriented to protection against the illegal importation of counterfeit and pirate goods. CBP should place these agents at all high volume ports, as well as at the IPR Center, the National Targeting and Analysis Group (NTAG) in Los Angeles, and within the Office of Regulations and Rulings.

Review the Strategic Trade Centers Approach. Located in Los Angeles, the IPR NTAG allows enforcement agents to monitor specific targets for IPR violations and coordinate reporting and training efforts. In addition, the NTAG develops training programs and records IPR statistics. CBP should evaluate the effectiveness of the NTAG. If proven effective, CBP should establish comparable IPR capabilities in additional ports.

Improving Port Activities:

Deploy Best Practices at All Ports. As recent Government Accountability Office (GAO) reports demonstrate, the track records of different ports in IPR enforcement vary widely. The DHS strategic plan must identify best practices and move toward implementing them department-wide. If we are to persuade our trading partners to adopt best practices to stop the movement of illicit products, we must show that we are implementing these practices ourselves.

Empower CBP Inspectors at the Port. In addition to enhancing resources, such as recordation and targeting, inspectors need greater authority to intercept counterfeit and pirated merchandise whether or not the work or mark has been recorded with CBP. Moreover, they must be able to coordinate with rights holders through information sharing and analysis of samples in order to identify illegal cargo. CBP should evaluate its policies for information exchange, and consider improved mechanisms for private sector entities to submit information regarding the import and export of counterfeit and pirated goods, and receive information back in a timely manner.

Continue to Improve and Promote CBP’s Intellectual Property Rights e-Recordation System. CBP’s online recordation system for trademarks and copyrights allows rights owners to electronically record their trademarks and copyrights with CBP. CBP personnel use the system daily as a resource enabling them to make IP infringement determinations. CBP should work with industry groups to inform and encourage more rights holders to utilize this resource. CBP, on its own and in coordination with other agencies, should make the recordation process more efficient and afford access to a larger universe of rights owners while simultaneously implementing policies where clearly infringing materials are denied entry regardless of whether the relevant IP interest has been recorded with CBP. CBP should begin working with the U.S. Patent and Trademark Office (USPTO) and the Copyright Office to create a single window for registration and recordation.

Improve on CBP’s IP Risk Model. Using innovative statistical analyses, CBP can utilize electronic means to assess risk to identify, detect, and intercept counterfeit goods at our borders. Continuing to improve the model is essential to better targeting, which in turn will lead to maintaining and increasing the volume of seizures each year. Similarly, CBP should spearhead a strategic effort to develop technologically-based authentication devices to allow CBP agents to more rapidly distinguish between legitimate and illegitimate shipments.

Collecting Civil Fines:

Improve Fines, Penalties and Forfeitures Office (FP&F). Increased funding for CBP’s FP&F and making needed regulatory and statutory reforms will improve the performance of FP&F. There are widespread reports of fines and penalties being foregone or substantially reduced, removing them as an effective law enforcement tool. The Office’s objective should be to significantly improve CBP’s track record in collecting civil fines imposed on importers of counterfeit and pirated merchandise—providing a more meaningful deterrent to these illicit activities.

Boosting International Efforts:

Work with Partners Around the World to Increase Seizures. Continue to partner with foreign governments and multilateral agencies (including Interpol and the World Customs Organization [WCO]) to enhance joint transnational IP investigative and enforcement activities, particularly focusing on foreign manufacturers and distributors of counterfeit and pirated goods.

Immigration and Customs Enforcement

We urge Immigration and Customs Enforcement (ICE) to enhance its vital role in IP enforcement in five areas: establishing high level leadership; coordinating with other enforcement agencies – especially CBP; strengthening the National IPR Coordination Center; dedicating resources for IP; and boosting international efforts.

Establishing High-Level Leadership:

The Assistant Secretary for ICE should appoint a high-level coordinator for all of ICE's IP enforcement activities. This individual should serve on the Intellectual Property Advisory Committee.

Coordinating with Other Enforcement Agencies:

Improve the Engagement between ICE and CBP. Coordination between enforcement agencies is essential to the success of efforts to combat counterfeiting and piracy. ICE and CBP should work together to develop a department-wide strategic plan that includes specific performance measures of progress. ICE should also increase its cooperation with other federal, state, and local enforcement agencies.

Strengthening the National IPR Coordination Center:

Continue to Improve and Expand the IPR Center. Add more manpower from each of the participating agencies (DOJ—including FBI and CCIPS; CBP; Food and Drug Administration; U.S. Postal Service; and Department of Commerce [DOC]—including U.S. Patent and Trademark Office [USPTO] and International Trade Administration [ITA]). ICE should explore the possibility of inviting participation by enforcement personnel from Canada, Mexico, and/or the EU.

As these new agents are integrated into the IPR Center, the center should develop a unified, cross-agency strategy, for the enforcement of intellectual property rights.

Resource and Activate an Operations Center. The IPR center was designed not only as a coordination center but also as an operations center. The operations center should be appropriately resourced and should aggressively conduct investigations on large, complex, and multijurisdictional counterfeiting and piracy cases.

Incorporate Training Initiatives into a Broader U.S. Government IP Training Strategy. All U.S. government IP training dollars should be spent in a strategic and coordinated manner consistent with the broader U.S. government IPR strategy that developed by the IPAC each year.

Improve Industry Outreach. Increase outreach efforts to industry and government partners to better identify supply chain vulnerabilities and other sources of counterfeit and pirated goods.

Dedicating IP Resources:

Support Dedicated Resources. Support authorization and appropriations for deploying a cadre of trained ICE enforcement personnel whose primary responsibility is combating counterfeiting and piracy.

Boosting International Efforts:

Work with Partners around the World. Continue to partner with foreign governments and multilateral agencies (including Interpol and the WCO) to enhance joint transnational IP investigative and enforcement activities, particularly focusing on foreign manufacturers and distributors of counterfeit and pirated goods.

Expand Resourcing and Utilization of ICE Attachés. On an on-going basis, provide IPR enforcement and other related training for all ICE attachés.. Maximize use of attachés to train and work with foreign counterparts, effectively expanding our border enforcement to the source of counterfeit and pirated goods.

Department of Commerce

International Trade Administration

We urge the International Trade Administration (ITA) to effectively utilize both the U.S.-EU Working Group and NAFTA IPR Working Group to better enforce IP rights in the following areas.

Effectively Utilizing the U.S.-EU Working Group.

Enhance Multilateral Cooperation. DOC should use the U.S.-EU Working Group on Intellectual Property Rights to promote an ambitious outcome in the Anti-Counterfeiting Trade Agreement (ACTA), identify a common pro-active IP agenda for multilateral organizations (including the World Trade Organization [WTO], World Health Organization [WHO], WCO, and United Nations Framework Convention on Climate Change [UNFCCC]), and develop a joint work program for the Organization for Economic Co-operation and Development (OECD) to improve its pro-IP positioning.

Third Country Cooperation. Make Canada the focus of cooperation in third countries. Send a unified message on key concerns with the previous copyright legislation bill (C-61).

Engage Labor and Small and Medium Enterprises (SMEs). Host an event that brings together government, industry (including SMEs), and labor from both the U.S. and the EU for a dialogue on the importance of intellectual property protection.

Discuss Legislative Best Practices. Both a U.S. and EU delegation from the U.S.-EU Working Group should deliver a presentation on recent legislative developments. The U.S. delegation should give a presentation on the PRO-IP Act, highlighting the need for high level focus/accountability, dedicated resources, and expanded enforcement authority. EU member states should take turns delivering presentations; for example, France should be encouraged to report on their new Internet legislation and the United Kingdom should be encouraged to report on the Digital Britain Report.

Improve Data Collection. The U.S.-EU Working Group should establish a comprehensive collection of comparative data in the U.S. and EU to determine the economic impact of IP-intensive industries. The working group should explore ways to obtain better and more comparable data.

Further Develop the IP Observatory. The EU delegation should report on how the IP Observatory will function and what its objectives will be. The U.S. delegation should encourage the EU to use the Observatory to develop strong IP best practices with recommendations for implementation.

Consider Best Practices. The U.S.-EU Working Group should explore the concept of an EU “ecolabel” (“Good Housekeeping seal of approval”) for legitimate websites.

Effectively Utilizing the NAFTA IPR Working Group:

Empower IP Officials. The United States Trade Representative (USTR) and DOC should use the NAFTA IPR Working Group to establish IP Leadership at the Executive/Ministerial level. Moreover, the working group should expand the authority of customs and other law enforcement officials to enforce IP rights and provide them with the resources to do the job.

Improve IP Legislation. The NAFTA IPR Working Group must bring national IP legislation in each country up to the highest standards.

Enhance Multilateral Cooperation. The NAFTA IPR Working Group should work together to conclude an ambitious and comprehensive ACTA. Moreover, the working group must collaborate to address third country issues, with a focus on China.

Increase Public Communications. The NAFTA IPR Working Group should initiate campaigns to raise public awareness regarding IP theft.

U.S. Patent and Trademark Office

We urge the U.S. Patent and Trademark Office (USPTO) to significantly improve IP enforcement and promotion by empowering IP attachés and enhancing training as outlined below.

Empowering IP Attachés:

Optimize the Effectiveness of IP Attachés. Since its inception in 2006, the IP attachés stationed in key markets around the world have been advocates on behalf of U.S. rights holders as dedicated staff that focus exclusively on IP issues. In early 2009, USPTO conducted a series of interviews with stakeholders on the IP attaché program. The results of this study should be used to adjust resources and activities accordingly to optimize the use of attachés.

Prepare Annual Plans. Each IP attaché should develop an annual IP strategy that covers both the trade and law enforcement sides of the Mission—with consultation from the private sector—promulgated by the head of mission. The IP attachés should be resourced appropriately and held responsible for implementation of this annual plan. These plans should fit into an overarching U.S. government IP strategy, as developed by the IPAC.

Increase Prominence within the Embassy. IP attachés should be an integrated part of the diplomatic team with sufficient resources and authority to implement their annual IP enforcement strategies and report to the head of mission. Ambassadors should regularly engage on IP issues with their attachés and local industry representatives.

Deploy Additional Attachés. Fund additional technical assistance to key governments for IP enforcement and establish and empower additional IP attachés at targeted U.S. embassies. The U.S. government should also deploy an IP attaché to the OECD.

Enhancing Training:

Improve the Global Intellectual Property Academy (GIPA). In 2006, USPTO established GIPA. The Academy offers a number of programs that bring foreign officials to the U.S. for training on patent, trademark, and copyright policy and enforcement best practices. This program should be further evaluated to ensure that the GIPA is part of an integrated U.S. government IP training strategy and to ensure that GIPA's work is being appropriately leveraged by others (i.e. ITA and Department of State). Training should focus on Brazil, Russia, India, China, and major developing countries.

United States Trade Representative

We urge the United States Trade Representative (USTR) to boost its international efforts to conclude strong trade/IP agreements, improve laws, policies, and enforcement in problematic countries, and defend IP at the World Trade Organization.

Boosting International Efforts:

Enforcement of IP Provision in U.S. Free Trade Agreements (FTAs). USTR should work with trading partners to make certain that the IP provisions of existing FTAs are enforced, ensuring that we are maximizing the value of such agreements.

Conclude U.S. Free Trade Agreements Supporting IP. The IPR Chapter of the U.S.-Korea FTA, including the accompanying side and confirmation letters, should serve as a base line for all future FTAs, including the Trans Pacific Partnership Agreement. Achieving a high standard for IP protections should be an explicit “principal U.S. negotiating objective” in all future FTAs and should be defined in any successor Trade Promotion Authority legislation, subject to consultation with Congress.

Conclude an Ambitious and Comprehensive Anti-Counterfeiting Trade Agreement. ACTA must build on TRIPS to produce a measurable improvement in the prevailing legal framework for the protection and enforcement of IP rights in the physical and online environments. Wherever possible, specific provisions of recent FTAs, such as the U.S.-Korea FTA, should serve as a template for this agreement. Furthermore, the agreement should include an effective and credible mechanism to monitor and provide incentives to encourage parties’ compliance with obligations.

Improve the Special 301 Process. USTR should take steps to ensure that the Special 301 process results in changes to IP laws, regulations, policies, and practices in countries listed on the Priority Watch, Watch, or Special 306 Monitoring lists. USTR should work with these countries to identify specific steps, timelines, and benchmarks that can be taken to improve IP enforcement. In addition, USTR should submit to the U.S. IPEC and IPAC a list of Special 301 targets and trade negotiating partners where capacity building programs and technical assistance could significantly improve IP enforcement. This list should then be used to strategically deploy U.S. government IP training funds and assistance.

Protect Intellectual Property at the WTO. USTR should protect IP at the WTO by ensuring that no further amendments or exceptions to TRIPS (or declarations that could have the effect thereof) are adopted that would undermine the current global IP regime. USTR should prepare a plan to promote IP rights among key developing countries within the WTO, work to shape and develop IP laws and norms as issues arise, and seek additional ways to strengthen IP enforcement around the globe.

Enforcement of TRIPS. USTR should aggressively oppose the misapplication of TRIPS exceptions related to IP rights by foreign governments. The U.S. government should unequivocally respond through firm action including placing offending nations on the Special 301 list, and using other diplomatic and financial levers to halt further expropriation of IP rights.

Department of State

We urge the Department of State (DOS) to substantially enhance its vital role in IP enforcement by boosting international efforts to confront and reverse anti-IP bias by member states in multinational organizations, specifically focusing on the Organization for Economic Cooperation and Development (OECD), World Health Organization (WHO), World Intellectual Property Organization (WIPO), and the U.N. Framework Convention on Climate Change (UNFCCC).

Boosting International Efforts:

Confront/Reverse Anti-IP Bias in Multinational Organizations. DOS should submit a report to the IPAC identifying the status of IP issues in multilateral fora (especially the OECD, WHO, WIPO, and UNFCCC). DOS should seek input from an IPR task force of the Advisory Committee on International Economic Policy. For each organization, DOS (working with the U.S. IPEC/IPAC) should identify specific policy actions that could be taken to strengthen/expand protections and enforcement of IP rights. These goals should be communicated to Ambassadors with the clear understanding that the achievement of these goals must be a priority for all elements of the U.S. Mission.

Protect IP in the Organization for Economic Co-operation and Development. DOS should ensure that all relevant OECD proposals, documents, activities, and studies demonstrate unambiguous support for strong IP rights as key to driving innovation, creativity, and thus job creation, economic growth, development, and solutions to global challenges. The same should hold true for OECD documents that address threats to IP from counterfeiting, piracy, compulsory licensing/forced tech transfer, and other forms of IP theft. The U.S. government should oppose the drafting and publication of any IP-related documents that fail to adhere to these standards. Furthermore, DOS should advance proposals to ensure all current and future OECD members are signatories to the WTO TRIPS and other global IP agreements; have national laws, regulations, and policies consistent with the letter and spirit of these agreements; and enforce them consistently and diligently.

Protect IP in the World Health Organization. DOS and the Department of Health and Human Services (HHS) should oppose any proposals advanced in the WHO or its various bodies that would in any way undermine the fundamental premise that strong IP rights drive the innovation and creativity needed to improve peoples' lives, enhance patient care, help identify and cure diseases, improve communities' welfare, and raise global standards of living. Such detrimental proposals could include studies, organizational changes, appointments, the formation of working groups, changes to WHO procedures, etc. Rather, DOS and HHS should work to enhance the understanding and appreciation of IP rights in spurring innovation with permanent representations to the WHO, visiting delegations, and WHO officials and staff, and advance U.S. government proposals that do the same within the WHO.

Protect IP in World Intellectual Property Organization. DOS should work to enhance the role of the WIPO as a strong promoter of IP rights and a chief proponent of IP enforcement, not only within the WIPO but also with other U.N. and international organizations and national governments. Furthermore, DOS should oppose any proposals advanced by or within the WIPO

(e.g. the Standing Committee on Copyrights and Related Rights) that would in any way undermine the fundamental premise that strong IP rights are critical to driving the innovation and creativity needed to improve global economic growth and development and to solve some of the biggest challenges facing mankind.

Increasing Priority of IP at U.S. Embassies. DOS should increase priority for IP at all key embassies through: (i) engaging Head of Mission on IP issue with IP attaché where one is assigned; (ii) developing an annual enforcement strategy prepared by the IP attaché with the full support of the Head of Mission; (iii) ensuring that IP attachés are an integrated part of the diplomatic team with sufficient resources and authority to implement their annual IP enforcement strategies.

GLOBAL INTELLECTUAL PROPERTY CENTER

OF THE

UNITED STATES CHAMBER OF COMMERCE

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February 16, 2010

The President
The White House
Washington, DC 20500

Dear Mr. President:

The U.S. Chamber of Commerce's Global Intellectual Property Center (GIPC), representing a broad spectrum of intellectual property-intensive companies, is dedicated to protecting and promoting the ideas and ingenuity that serve as key engines of job creation, competitiveness, and economic growth for the United States. Accordingly, the GIPC looks forward to working with your administration to address our priority issues related to intellectual property (IP) in 2010 that will help advance our shared objectives of job creation and economic recovery.

Today's global IP system is designed to drive creativity and innovation, and advance the spread of knowledge, by protecting creators' and inventors' rights. This system also provides assurance to consumers that the products they use are authentic, safe, and effective. Sound IP policies in the United States and abroad are essential to advancing global economic recovery and creating high-quality American jobs. Currently, IP-based industries account for more than \$5 trillion of the U.S. GDP, account for more than half of our exports, and employ over 18 million Americans.

America's innovation and creation economy, however, faces threats from criminal counterfeiting and piracy networks, as well as from a few foreign governments and special interest groups determined to weaken IP rights and undermine global norms. Some governments want to take America's intellectual property to bolster their own economies and enhance their competitiveness. In the face of these challenges, the GIPC is committed to working with the administration to accomplish the following priorities during the coming year:

Fully Implement the PRO-IP Act (P.L. 110-403)

Among the important core provisions of the PRO-IP Act were those that created the position of the U.S. Intellectual Property Enforcement Coordinator (IPEC) within the Executive Office of the President. The GIPC applauds the administration for appointing Victoria Espinel as the nation's first IPEC. Based on her background and experience, we believe Ms. Espinel is eminently qualified for the important task of ensuring the nation's IP policy supports American jobs and innovation, while coordinating and streamlining the IP activities of various departments and agencies. In 2010, the administration should ensure the IPEC has the requisite authority, budget and staff to successfully carry out her duties.

Chief among those tasks is coordinating the development of a first-ever, government-wide, joint strategic plan for intellectual property. The GIPC sees the development of this national strategy as a unique opportunity to highlight the importance of IP rights, innovation, and creativity, while maximizing the effectiveness and efficiency of federal IP enforcement efforts. As such, we encourage the administration to engage industry and other stakeholders through a vigorous process that develops the most comprehensive and effective strategy possible.

The PRO-IP Act also recognized that criminal enforcement of IP laws should be among the highest priorities of the Department of Justice (DOJ). The Act requires DOJ to activate dedicated resources in support of IP and help fund state and local IP enforcement efforts. DOJ has already taken important steps toward implementing these requirements under the law. The GIPC encourages DOJ to continue building on these efforts and stands ready to support them as they implement these important federal requirements.

Preserve a Strong International IP Legal Framework

The protection of intellectual property rights abroad is also essential to promoting the growth of our IP-intensive industries in particular, and our broader economic competitiveness more generally. It is important that your administration continue to promote and defend a robust international system of IP laws and norms, from protecting these rights in international fora such as the World Intellectual Property Organization, to advancing agreements, such as the U.S.-Korea Free Trade Agreement and Trans-Pacific Strategic Economic Partnership Agreement, with strong IP protection and enforcement provisions.

We also encourage your administration to oppose any efforts—such as those to impose unwarranted exceptions to patent, trademark, and copyright protections—to weaken IP rights in international institutions. For example, we urge you to remain vigilant in future United Nations climate change negotiations to avoid any weakening of IP rights, which are critical to incentivizing investments and creating the innovations needed to address global problems.

Fight Online Counterfeiting and Piracy

The Internet has transformed society, revolutionized the global economy, and deeply affected Americans' daily lives – including how they receive information, purchase goods and services, and access entertainment. The Internet has been one of the most important and innovative developments for mankind over the last century, and the prospect of greater access at faster speeds will undoubtedly continue to shape our world in the coming years.

Notwithstanding its many benefits, the emergence of the Internet and new online technologies has also fueled an explosion in IP theft, which not only poses a risk to consumer health and safety, but severely undermines sectors of our economy that have historically provided secure, high-paying jobs. Indeed, the rampant theft of movies, music, books and other online content is threatening the ability of U.S. companies to increase investment and hire additional workers in these industries—sectors in which America has been a world leader, and through which the international community has come to know our country. As such, the GIPC and its members are eager to work with the administration to examine this problem and consider new and creative efforts to fight counterfeiting and piracy in the online environment.

As part of this effort, it is critical that the administration: (1) develop broadband policies and regulations that preserve the right of Internet Service Providers to use reasonable methods and effective tools to prevent the distribution of illicit content; and (2) encourage an active and robust partnership between content owners and ISPs to prevent the use of proprietary networks for the transmission of infringing materials. Your support for similar policies with other governments will also be important as they develop their broadband policies.

Conclude a Comprehensive Anti-Counterfeiting Trade Agreement

The GIPC is encouraged by the administration's efforts to conclude a substantive and enforceable Anti-Counterfeiting Trade Agreement (ACTA). To ensure success, the agreement must be ambitious and comprehensive, build on existing international rules and norms, specifically the TRIPS agreement, and complement the IP provisions of current and pending free trade agreements, such as those with Oman and Korea. ACTA must include robust provisions to confront IP theft in both the physical and online environments, and incorporate effective and credible enforcement mechanisms to ensure success.

Some have raised concerns about the transparency of the ACTA negotiations. While the GIPC also supports maximum transparency, this criticism risks shifting the focus away from the substance of the agreement and its value to our economy. The GIPC firmly believes that concluding an agreement in 2010 will help protect American jobs and stimulate the economy. Therefore, while bearing in mind the practical limitations involved in the negotiation of any agreement, we encourage the administration to continue to make every effort to increase transparency to ensure this issue is not used as a justification for delay. Furthermore, we urge the administration to ensure that Congress continues to be fully briefed on the ACTA negotiations and why concluding this agreement is in the country's best interests.

Advance Key IP Issues in Specific Countries

The GIPC remains concerned about a number of IP issues in a few key countries that are harming America's competitiveness and economic growth. For example, India's patent laws prevent many critical medicines from being patented, thereby discouraging the development of important new treatments and cures. Similarly, China's inadequate laws and systems governing regulatory data protection and patent linkage create an obstacle to innovation and a threat to rights holders. Internet piracy in and from China is also doing great harm to America's creative industries. A concerted effort to address internet piracy, including preventing deep-linking to infringing files, and removing illegal content from or shutting down sites that host or provide access to infringing materials, would go a long way to addressing this problem.

The GIPC is also concerned about actions by some countries to undermine trademark rights in ways that are inconsistent with their international treaty obligations, such as

by introducing “plain packaging” legislation that would eliminate the use of well-known trademarks on tobacco products. At the same time, we also encourage your administration to strengthen cooperation with key trading partners to promote shared IP priorities and address all of these issues. In particular, we welcome efforts to enhance U.S.-European Union cooperation on IP matters, and believe that such cooperation at the highest levels is essential to our economic growth.

Work with Congress on Legislation to Strengthen IP Protection and Enforcement

The GIPC believes the administration should work with Congress to enact legislation that enables the federal government to better protect Americans’ IP rights domestically and abroad. In July 2009, the “Customs Facilitation and Trade Enforcement Reauthorization Act of 2009,” S. 1631, was introduced with important provisions to improve the capability of U.S. Customs and Border Protection and Immigration Customs Enforcement to prevent counterfeit goods from entering the United States. The GIPC strongly supports this legislation and hopes to see it enacted into law in 2010.

The GIPC is also eager to work with Congress to enact legislation to improve the U.S. Trade Representative’s “Special 301” process by enhancing the tools available to the administration to engage more effectively with nations that fail to respect or enforce the rights of America’s innovators and/or live up to their international IP obligations. This legislation should require an action plan for Priority Watch List countries that includes clear benchmarks to measure performance, and meaningful consequences for nations that fail to perform.

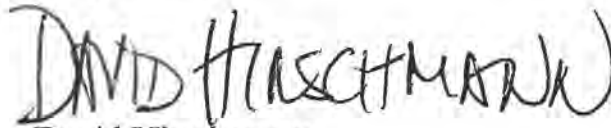
Finally, we encourage the administration to work with Congress to enact legislation that expands the IP attaché program into additional countries abroad. These attachés – stationed at American embassies in selected countries – are an important asset in helping address IP protection and enforcement issues. Given the success of the current attaché program, the GIPC urges Congress and the administration to work together this year to enact attaché provisions passed by the House in 2009 as part of H.R. 2410, the Foreign Relations Authorization Act.

The President
February 16, 2010
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Conclusion

The administration has much to do in the coming year, especially with an economy trying to regain its footing. The challenges facing America and the world today make your continued support for IP rights at home and abroad essential. The GIPC believes the administration can take a lead role in partnering with Congress, the business community, labor, and other stakeholders to safeguard and create jobs, while protecting consumer health and safety and advancing global development. We look forward to working with you and your administration to advance these aims.

Respectfully,



David Hirschmann
President and Chief Executive Officer
Global Intellectual Property Center

cc: The Honorable Joseph R. Biden, Vice President
The Honorable Hillary Rodham Clinton, Secretary of State
The Honorable Eric H. Holder, Jr., Attorney General
The Honorable Gary F. Locke, Secretary of Commerce
The Honorable Janet A. Napolitano, Secretary of Homeland Security
The Honorable Rahm I. Emanuel, White House Chief of Staff
The Honorable Peter R. Orszag, Director of Office of Management and Budget
The Honorable Ronald Kirk, United States Trade Representative
The Honorable Victoria A. Espinel, U.S. Intellectual Property Enforcement Coordinator
The Honorable Robert S. Mueller, III, Director, Federal Bureau of Investigation
The Honorable David Kappos, Director, United States Patent and Trademark Office