

**Shaun Donnelly**

Senior Director  
International Business Policy

March 24, 2010

The Honorable Victoria A. Espinel  
U.S. Intellectual Property Enforcement Coordinator  
The Office of Management and Budget  
725 17<sup>th</sup> Street, NW  
Washington, DC 20503

Dear Ms. Espinel:

Thank you for the opportunity to offer input, observations and recommendations on the full range of Intellectual Property Rights (IPR) issues confronting the U.S. government and your Intellectual Property Enforcement Coordinator (IPEC) team as you assume this important new responsibility. I am responding on behalf of the National Association of Manufacturers (NAM). The NAM is our nation's largest industrial trade association, representing small and large manufacturers in every industrial sector and in all 50 states.

We at the NAM have long recognized the importance of strong IPR laws, regulations and enforcement here at home and around the world. Working primarily through our active IPR Subcommittee with our members from across the full spectrum of industrial sectors, the NAM played a leadership role in pushing for Congressional enactment of the PRO-IP Act, which, among other important provisions, mandated the creation of your Office. In fact, the NAM has participated in nearly every proposal and debate on IPR, both in Congress and by the executive branch.

We look forward to a close and mutually-beneficial relationship with you and your IPEC team. We already enjoy excellent relationships with all the key U.S. government agencies working on domestic and international IPR issues; but our members have commented to us repeatedly that they find working with the executive branch confusing as agencies not only do not coordinate their efforts offshore but, in some cases, compete against each other. In an effort to better organize ourselves, and participate fully in the opportunities afforded to our members by PRO-IP and by your Office, the NAM Board of Directors earlier this month created an International IPR Task Force under its own International Economic Affairs Policy Committee.

This new International IPR Task Force, chaired by an executive from ITW, will be a forum where our member companies can address the full range of international IPR issues, including prospective and pending trade agreements (where public input is solicited), executive agencies' interaction with their counterparts around the globe, as well as combating international counterfeiting and piracy. Our Task Force will want to work with all relevant U.S. government agencies, including IPEC, to develop and advance an aggressive, comprehensive and action-oriented IPR agenda for America.

At this initial stage I would like to offer some broad policy positions, priorities and recommendations from the NAM for your consideration:

1) IPR Is NOT a Niche Issue – A core message from the NAM is that IPR is not, repeat not, a narrow niche issue affecting only a few large and wealthy multinational corporations in a few sectors (e.g. entertainment, software and pharmaceuticals). That model, if it were ever true, is certainly totally disproved today. The NAM message is loud and clear – IPR is a top priority issue for American manufacturers, large and small and across all industrial sectors.

If a company is succeeding in today's global manufacturing environment, it is likely based in large part on IPR – patents, copyrights, trademarks, trade secrets, branding, etc. America is not the low-cost producer for basic commoditized products. Our competitive edge and our sole ability to create high quality, long-lasting jobs, lies in high-quality, advanced technology and hard-earned brand recognition for quality and service – in short, on intellectual property.

In line with this reality, the NAM requests a prominent seat at the table as the IPEC, and the U.S. government more generally, consult with industry on fundamental IPR issues be reserved for manufacturers. The NAM is anxious to play that role.

2) Small and Medium-Sized Manufacturers Require Special Attention – The NAM appreciates the considerable efforts of U.S. government agencies, including the Patent and Trademark Office (PTO), the Department of Commerce and the Small Business Administration, to educate, train and support Small and Medium-Sized Manufacturers (SMMs) on the basics of international IPR, but much, much more needs to be done. SMMs are increasingly victimized internationally by counterfeiters and pirates. Many just do not know what to do. The NAM and other trade associations, large and small, plus state and local business groups, state and local governments, universities and others can help; but the U.S. government needs to lead the effort.

3) Conclude ACTA and Bring It Into Force; Get Prompt Congressional Approval of Pending FTAs – The NAM strongly supports the Administration's effort to negotiate and conclude a gold-standard Anti-Counterfeiting Trade Agreement (ACTA) with key trading partners. The key is to insist on high standards of IPR protections, enforcement and international cooperation. The NAM also believes that one of the best things we can do to strengthen IPR laws, regulations and enforcement with key trading partners is to conclude high-standard Free Trade Agreements (FTAs). We are distressed that the Colombia, Panama and Korea FTAs (each with very strong IPR provisions) have been awaiting congressional approval for over three years. The Administration should push aggressively to obtain congressional approval of those three pending FTAs immediately.

4) Develop Strengthened IPR Criteria for U.S. Trade Preference Programs – Congress intends to conduct a thorough review of the overall U.S. Trade Preference programs (including GSP, ATPA, CBTPDEA, AGOA and other possible new initiatives) this year. The NAM strongly urges the Administration to work with Congress, the business community and other stakeholders to develop updated and strengthened IPR benchmarks among the key eligibility criteria. Our NAM Task force will be focusing on that issue and looks forward to sharing detailed ideas with the Administration in the months ahead.

5) Strengthen Interagency Coordination – In your earlier roles at the Office of the U.S. Trade Representative (USTR), you personally made important contributions to efforts to promote cooperation and coordination. Your new role at the White House will be key in that regard. Over the years, several NAM members have commented on not only the lack of coordination among agencies, especially those offices located on foreign soil but, in some cases, report an air of competition among them. It will be especially important for you to fully integrate the law enforcement (DOJ, FBI and DHS/CBP) side of the Administration with the policy aid (PTO, USTR, Commerce/ITA, State and NSC). We understand and support the needs of law enforcement for prosecutorial independence and confidentiality. But we believe that there remains room for considerable improvement in linking together the enforcement and policy sides of the U.S. government house.

6) Strengthen IPR Efforts and Coordination at U.S. Embassies – Another success story in recent years is the work done at many U.S. embassies and consulates abroad in advancing America's IPR agenda, especially in combating international counterfeiting and piracy. Some important agencies have increased IPR staffing in our overseas posts abroad. But, as here at home, progress requires close coordination of all embassy elements on the ground. In some large embassies, staff on the ground from the following agencies and embassy sections can all be working on IPR issues – PTO, Commerce/ITA, CBP, FBI Legal Attaché, USAID and State Department Economic Officers. Imagine, if you will, the daunting task facing an SMM executive who learns that its IP has been counterfeited in Malaysia by a Taiwan-based company selling the now unsafe product into Nigeria and Bolivia.

The NAM encourages the IPEC to lead a Washington interagency review of the coordination efforts, to develop and share best practices among embassies, and to provide increased resources for IPR training and capacity-building programs with key foreign partners. The NAM suggests that each American ambassador be specifically instructed of the importance of a strong and well-coordinated IPR program. We are not advocating cookie-cutter, one-size-fits-all solutions for every embassy. Rather we believe that each ambassador, as the personal representative of the President, should have at his/her disposal a best practices template for establishing an embassy-based interagency IPR team that best fits the local circumstances.

7) Identify and Fix Outdated U.S. Government Regulations and Policies That Inhibit Effective IPR Enforcement Here at Home – Not all IPR problems are found overseas. We encourage IPEC to lead an aggressive review of all U.S. government agency programs, regulations and policies and to fix any problems that emerge. One particular example that has already been called to the attention of the Department of Homeland Security is the ill-advised decision from mid-2008 restricting the ability of U.S. Customs agents on the front lines at our borders from sharing full information about suspected shipments of counterfeit and pirated products with the legitimate rights holders. This policy, which we understand originated in the Customs and Border Protection's (CBP) General Counsel's office, should be reversed so as to facilitate, not frustrate, all appropriate exchanges between Customs officials and rights holders. This policy is one egregious example, but we encourage IPEC to take the lead in pushing to identify and reverse similar problems throughout the government.

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8) Oppose the Brazilian "Cross-Retaliation" WTO Case in Every Way Possible – We are very concerned with the threat of World Trade Organization (WTO)-authorized cross-retaliation into the IPR field. This linkage from an agricultural subsidy dispute into totally unrelated IPR areas establishes a very damaging global precedent. We urge the White House to exhibit direct and ongoing leadership to find a solution to the long-running cotton subsidy dispute before Brazil is able to implement any of the threatened retaliation against U.S. patents, copyrights, or licensing arrangements. The NAM stands ready to assist in this effort.

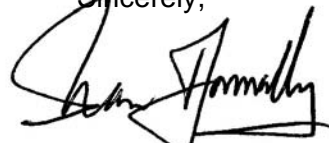
9) China – Finally, we encourage the IPEC and the overall interagency IPR team to make 2010 the year of China. With study after study showing clearly that over 80 percent of the counterfeit products seized here in the U.S. and around the world can be traced back to China, it's time to focus our policy, resources and leverage on that particular country. We are not talking about "China-bashing" or singling out China for unfair treatment. However, in many manufactured goods sectors, China is the dominant source of counterfeit products. The Chinese government, which is aggressively promoting "Brand China", is not doing nearly enough to solve those problems.

Our government should not be afraid to speak the truth or to focus our IPR efforts on China. At a time when China is playing a larger role in global economic leadership, from the G-20 to the Doha negotiations in the WTO, and a growing role in global financial matters, China must be treated as a special priority problem.

We plan to focus on China in our new NAM Task Force on International IPR and look forward to an intensive dialogue on China with IPEC and other agencies as we move through 2010.

Thank you very much for the opportunity to register these initial thoughts. The NAM and our member companies want to work closely with you, your IPEC team and all the U.S. government agencies involved in IPR issues. I look forward to regular opportunities to exchange information, assessments and ideas as we all move forward. Please don't hesitate to contact me if there is any area where you think we could help.

Sincerely,

A handwritten signature in black ink, appearing to read "Shaun Donnelly". The signature is stylized and cursive.

Shaun Donnelly