

OFFICE OF MANAGEMENT AND BUDGET

Request of the U.S. Intellectual Property Enforcement Coordinator for Public Comments: Development of the Joint Strategic Plan on Intellectual Property Enforcement

AGENCY: Office of the U.S. Intellectual Property Enforcement Coordinator, Executive Office of the President.

ACTION: Request for written submissions from the public.

SUMMARY: The Federal Government is starting the process of developing a new Joint Strategic Plan on Intellectual Property Enforcement. By committing to common goals, the U.S. Government will more effectively and efficiently combat intellectual property infringement. In this request for comments, the U.S. Government, through the Office of the U.S. Intellectual Property Enforcement Coordinator (“IPEC”), invites public input and participation in shaping the Administration’s intellectual property enforcement strategy.

The Office of the U.S. Intellectual Property Enforcement Coordinator was established within the Executive Office of the President pursuant to the Prioritizing Resources and Organization for Intellectual Property Act of 2008, Public Law 110-403 (Oct. 13, 2008) (the “PRO IP Act”). Pursuant to the PRO IP Act, IPEC is charged with developing the Administration’s Joint Strategic Plan on Intellectual Property Enforcement for submission to Congress every three years. In carrying out this mandate, IPEC chairs an interagency intellectual property enforcement advisory committee comprised of Federal departmental and agency heads whose respective departments and agencies are involved in intellectual property enforcement.

This request for comments and recommendations as IPEC develops a new enforcement strategy is divided into three parts. In the first section titled “Strategy Recommendations,” IPEC requests detailed recommendations from the public regarding specific recommendations for improving the U.S. Government's intellectual property enforcement efforts. In the second section titled “Threat Assessment,” IPEC seeks written submissions from the public regarding existing and emerging threats to the protection of intellectual property rights and the identification of threats to public health and safety and the U.S. economy resulting from intellectual property infringement. In the third section titled “Optional Questions,” IPEC seeks written submissions from the public to assist IPEC and agencies in the development of specific action items. Responses to this request for comments may be directed to either, or both, of the two sections described above.

DATES: Submissions must be received on or before July 25, 2012, at 5 p.m.

ADDRESSES: All submissions should be electronically submitted to <http://www.regulations.gov>. If you are unable to provide submissions to regulations.gov, you may contact the Office of the U.S. Intellectual Property Enforcement Coordinator at intellectualproperty@omb.eop.gov using the subject line “Development of the Joint Strategic Plan on Intellectual Property Enforcement” or (202) 395-1808 to arrange for an alternate method of transmission. The regulations.gov website is a Federal E-Government website that allows the public to find, review and submit comments on documents that have published in the Federal Register and that are open for comment. Submissions filed via the regulations.gov website will be available to the public for review and inspection. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary business information.

FOR FURTHER INFORMATION CONTACT: Office of the U.S. Intellectual Property Enforcement Coordinator, at intellectualproperty@omb.eop.gov or (202) 395-1808.

SUPPLEMENTARY INFORMATION: Through the PRO IP Act, Congress established the IPEC, to serve as the lead office within the Executive Office of the President responsible for formulating and implementing a Joint Strategic Plan to improve the effectiveness of the U.S. Government's efforts to protect the rights of intellectual property owners and to reduce the costs of and threats posed by intellectual property infringement, in the U.S. and in other countries. IPEC seeks public input, in the form of written comments, on the formulation of a Joint Strategic Plan and on the U.S. Government's intellectual property enforcement efforts.

I. Strategy Recommendations

IPEC requests written submissions from the public that provide specific recommendations for significantly improving the U.S. Government's intellectual property enforcement efforts.

Important to the development of an effective enforcement strategy, is ensuring that any approaches that are considered to be particularly effective as well as any concerns with the present approach to intellectual property enforcement are understood by policymakers.

Recommendations may include, but need not be limited to: legislation, regulation, guidance, executive order, Presidential memoranda, or other executive action, including, but not limited to, changes to agency policies, practices or methods. Recommendations should include a detailed description that addresses the following points: issue, agencies necessary to address the issue, and recommendation for addressing the issue identified. If a submission includes multiple recommendations, IPEC requests that the submission rank the recommendations in order of priority.

In addition to the foregoing general request, IPEC is seeking information and/or recommendations in response to the questions set out in section III below to assist IPEC in developing new enforcement strategy action items that further the priorities identified in the Joint Strategic Plan. The submission of responses to one or more of the questions in section III is entirely optional.

II. Threat Assessment

Emerging and Future Threats

The issues, threats and challenges that pertain to ensuring adequate and appropriate enforcement of intellectual property are changing rapidly. Since the inaugural Joint Strategic Plan was released in June 2010, new threats have emerged that warrant inclusion among the priorities identified in the forthcoming Joint Strategic Plan. Therefore, IPEC welcomes information pertaining to and, to the extent practicable, recommendations for combating emerging or future threats to American innovation and economic competitiveness posed by violations of intellectual property rights over the next five to ten years.

Threats to Health and Safety and the U.S. Economy

IPEC seeks written submissions from the public identifying the costs to the U.S. economy resulting from infringement of intellectual property rights, both direct and indirect, including any impact on the creation or maintenance of jobs. In addition, IPEC seeks written submissions identifying threats to public health and safety posed by intellectual property infringement, in the U.S. and internationally. IPEC also welcomes submissions on the economic costs of enforcing intellectual property rights.

Submissions directed at the economic costs resulting from *violations* of intellectual property rights must clearly identify: (1) the type of intellectual property protection at issue, *e.g.*, trademark, copyright, patent, trade secret or other (2) the methodology used in calculating the estimated costs and any critical assumptions relied upon, (3) identify the source of the data on which the cost estimates are based, and (4) provide a copy of, or a citation to, each such source of information.

Submissions directed at the economic costs resulting from *enforcement* of intellectual property rights must clearly identify: (1) the type of intellectual property protection at issue, *e.g.*, trademark, copyright, patent, trade secret or other (2) the methodology used in calculating the estimated costs and any critical assumptions relied upon, (3) identify the source of the data on which the cost estimates are based, and (4) provide a copy of, or a citation to, each such source of information.

Submissions directed at threats to public health or safety must: (1) include a detailed description of the threat, (2) identify the source of the information demonstrating the existence of the threat, and (3) provide a copy of, or a citation to, each such source of information.

III. Optional Questions

1. How can international regulatory and law enforcement collaboration and information sharing be enhanced to address cross-border intellectual property infringement?
2. What legal or operational changes might be made, or collaborative steps undertaken between federal agencies and the private sector, to streamline or improve the efficacy of enforcement efforts directed at protecting intellectual property rights?

3. What measures can be taken by the private sector to share actionable information on entities engaging in or supporting infringement of intellectual property rights?
 - a. To the extent necessary, what government safeguards and conditions would be useful to facilitate sharing of such information?
4. What information developed from law enforcement and intelligence community threat assessments would be beneficial to the private sector in order to mitigate the risk of trade secret theft and economic espionage?
5. What additional measures by the U.S. Government would most significantly enhance efforts to combat trade secret theft and economic espionage?
6. When goods are imported into the United States, U.S. Customs and Border Protection (“CBP”) and other federal agencies charged with enforcing intellectual property rights and ensuring the safety of products entering the stream commerce, *e.g.*, U.S. Food and Drug Administration and the Consumer Product Safety Commission, engage in a risk-based assessment of the level of risk that a shipment contains violative goods., and decides whether to inspect the shipment based on this risk determination. What steps can federal agencies and the private sector take to improve the risk assessment process so that high risk shipments may be quickly identified and segmented from lower risk shipments?
7. What authentication tools and track and trace technologies would significantly enhance federal efforts to identify suspect counterfeit or pirated goods?
8. In a global economy that increasingly utilizes Internet based e-commerce and mobile platforms for transactions, the number of shipments sent through international mail and express carrier services has dramatically grown in recent years. Accordingly, law enforcement efforts directed at interdicting infringing goods shipped in the express and

international mail environments have resulted in significant increases to seizure levels of infringing goods shipped through these modes of transit. What steps could be undertaken by CBP, its partner U.S. Government agencies, and the private sector to further improve detection of express carrier and international mail shipments containing infringing goods?

9. Are there ways in which CBP could improve its intellectual property rights e-recordation system to enhance ease of use and make it a more useful tool for intellectual property rights enforcement?
10. As laid out in IPEC's 2011 Annual Report on Intellectual Property Enforcement, using our resources as efficiently as possible is a priority. Are there additional ways in which the U.S. Government could make more efficient use of its resources in protecting intellectual property?

Background

The 2010 Joint Strategic Plan as well as information describing a number of intellectual property enforcement initiatives led by the Office of the U.S. Intellectual Property Enforcement Coordinator can be found at <http://www.whitehouse.gov/omb/intellectualproperty>.

As set forth by the PRO IP Act, the objectives of the Joint Strategic Plan include:

- Reducing the supply of infringing goods, domestically and internationally;
- Identifying weaknesses, duplication of efforts, waste, and other unjustified impediments to effective enforcement actions;
- Promoting information sharing between participating agencies to the extent permissible by law;
- Disrupting and eliminating infringement networks in the U.S. and in other countries;

- Strengthening the capacity of other countries to protect and enforce intellectual property rights;
- Reducing the number of countries that fail to enforce intellectual property rights;
- Assisting other countries to more effectively enforce intellectual property rights;
- Protecting intellectual property rights in other countries by:
 - Working with other countries to reduce intellectual property crimes in other countries;
 - Improving information sharing between law enforcement agencies in the U.S. and in other countries; and
 - Establishing procedures for consulting with interested groups within other countries;
- Establishing programs to enhance the enforcement efforts of foreign governments by providing training and technical assistance designed to:
 - Enhance the efficiencies and minimize the duplication of U.S. Government training and assistance efforts;
 - Prioritize deployment of U.S. Government resources to those countries in which programs can be carried out most effectively and will have the greatest impact on reducing the number of infringing products in the relevant U.S. market, protecting the intellectual property rights of U.S. rights holders, and protecting the interests of U.S. persons otherwise harmed by infringements in other countries.

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Executive Office of the President