

JOINT STRATEGIC PLAN

2020 to 2023



UNITED STATES
INTELLECTUAL PROPERTY ENFORCEMENT COORDINATOR



IPEC JOINT STRATEGIC PLAN:

This report is submitted pursuant to *15 U.S.C. §8113*.

During the past three and a half years, President Trump and his Administration have worked to promote strong intellectual property rights protection and enforcement, both domestically and abroad. As part of an integrated approach, the Trump Administration views our intellectual property strategy, policy and enforcement efforts, together, as key to helping secure the future of our innovative economy and to maintaining our competitive advantage.

This Joint Strategic Plan, developed by the Office of the U.S. Intellectual Property Enforcement Coordinator, brings together the combined and coordinated efforts of the White House, the Departments of Commerce, Justice, Homeland Security, State, Treasury, Defense, Health and Human Services, and Agriculture, the Office of the U.S. Trade Representative, and the U.S. Copyright Office. This report was originally mandated to be submitted by the U.S. Intellectual Property Enforcement Coordinator over a decade ago by the Prioritizing Resources and Organization for Intellectual Property Act of 2008, and builds upon that framework to provide an overview of the Trump Administration's intellectual property enforcement strategy and policy efforts. For the United States' approach to intellectual property and innovation policy to be successful, it must continue to be a combined effort that includes all branches of government, the private sector, and our international partners.

The Trump Administration continues to build on past strategic efforts in all areas of intellectual property policy, including patents, copyrights, trademarks and trade secrets, both domestically and abroad. But the Administration also recognizes that for the United States to maintain its future economic competitiveness, we need to think strategically and shift the paradigm to one where we not only place America First, but regard America's inventive and creative capacity as something that we must protect, promote and prioritize.



UNITED STATES INTELLECTUAL PROPERTY STRATEGY



“In order to maintain our competitive edge in an increasingly global and technology-driven economy, we must protect the advancements and breakthroughs in industry that are vital to sustaining recent successes and accelerating growth. That is why we will continue working to put an end to intellectual property theft and other abusive practices through strong enforcement of our trade laws and efforts to strengthen our cyber infrastructure.”

- President Donald J. Trump¹

Article I, Section 8, Clause 8 of the Constitution recognizes the fundamental importance of intellectual property and its protection to the United States. Intellectual Property (IP) underpins nearly every aspect of our economy – it supports good paying jobs, it supports the arts, sciences and technology, and it creates a framework that allows new industries and innovations to flourish.

President Trump is the first President to formally recognize World IP Day and in his third proclamation on April 24, 2020 stated that “[W]e pay tribute to our Nation’s long history of ingenuity and advancement, and we recommit to protecting, promoting, and prioritizing a business and economic environment that supports those who carry on this legacy. The pioneering spirit of these artists, authors, inventors, and other creators has improved our lives and the lives of millions of people around the world, and will continue to propel us toward a better future.”²

Under the Trump Administration, the Office of the U.S. Intellectual Property Enforcement Coordinator³ (IPEC) along with other White House offices, in coordination with executive branch departments and agencies, works to advance pro-growth policies, to promote and protect our great competitive advantage – our nation’s innovative economy. And this year, under the leadership of President Donald J. Trump and with the support of Congress, the White House Office of the U.S. Intellectual Property Enforcement Coordinator (IPEC) has been established as the newest component agency of the Executive Office of the President and part of the National Economic Council, ensuring that in the decades to come the IPEC will be there to advise the President, coordinate policy, and advocate for American interests abroad.

¹ President Trump Proclaims October 4, 2019, as National Manufacturing Day (October 3, 2019) - <https://www.whitehouse.gov/presidential-actions/presidential-proclamation-national-manufacturing-day-2019/>

² President Trump Proclaims April 26, 2020, as World Intellectual Property Day (April 24, 2020) - <https://www.whitehouse.gov/presidential-actions/proclamation-world-intellectual-property-day-2020/>

³ U.S. Code: Title 15 (Commerce and Trade), Chapter 107 (Protection of Intellectual Property Rights) - 15 U.S.C §8111. In the White House, the IPEC Office has been established as the newest component agency of the Executive Office of the President and part of the National Economic Council (NEC).



Our efforts have focused on coordinating and developing the United States' overall intellectual property enforcement policy and strategy, to promote innovation and creativity, and to ensure effective intellectual property protection and enforcement, domestically and abroad.

The United States' intellectual property strategy involves a broad range of executive branch agencies and departments to ensure that the government's efforts are focused and well-coordinated.

Over the past three and a half years, the Trump Administration has taken significant actions to promote and protect intellectual property. Looking forward, we will continue to implement the trade agreements, policies, and programs that demonstrate our commitment to ensuring strong and effective intellectual property protection and enforcement both at home and abroad.

The Administration's four-part strategic approach includes:

- engagement with our trading partners;
- effective use of all our legal authorities, including our trade tools;
- expanded law enforcement action and cooperation; and
- engagement and partnership with the private sector and other stakeholders.

The United States government has taken a targeted, practical, and comprehensive approach toward addressing intellectual property policy and strategy.⁴ The goal remains to ensure a level playing field for American innovators and creators, where their innovations and creations are respected and protected, and for systems to be in place that allow American businesses to operate in a free, fair and open marketplace.

To that end, IPEC established the White House Intellectual Property Strategy Group that regularly brings together the National Economic Council (NEC), National Security Council (NSC), Office of Science and Technology Policy (OSTP), Council of Economic Advisors (CEA), Office of the Vice President (OVP), Office of the U.S. Trade Representative (USTR), other relevant White House Offices, and Departments and Agencies. Because intellectual property policy in the international and domestic contexts affects multiple departments and agencies, the White House manages the collaborative policy development process to determine courses of action and make Presidential recommendations to ensure that all views are properly presented and considered.

The Administration's overall efforts involve a multitude of executive branch departments and agencies, that each handle both different and overlapping aspects of the federal government's intellectual property strategy and policy. These efforts include senior officials from the Departments of Commerce, Justice, Treasury, Homeland Security, State, Defense, Agriculture, and Health and Human Services, and the U.S. Copyright Office. Additionally, by statute, the executive branch has three Presidentially-appointed and Senate-confirmed positions focused on IP, which are the Intellectual Property Enforcement Coordinator in the Executive Office of the

⁴ This includes implementation, of areas in line with Presidential policies and priorities, of the Joint Strategic Plan, submitted under 15 U.S.C. §8113, for FY2017 to FY2019.



President; the Undersecretary of Commerce for Intellectual Property and Director of the U.S. Patent and Trademark Office (USPTO) at the Department of Commerce; and the Chief Innovation and Intellectual Property Negotiator at USTR.

Across the Administration, federal departments have vital roles over intellectual property policy and strategy. The Secretary of Commerce leads several agencies that have important intellectual property responsibilities and serves as a leading voice shaping intellectual property policy both in the United States and abroad. Chief among the Commerce Department agencies is the USPTO, with statutory authority to advise “the President, through the Secretary of Commerce, on national and certain international intellectual property issues” and advise “Federal departments and agencies on matters of intellectual property in the United States and intellectual property protection in other countries.” 35 U.S.C. §2(b) (8)-(13). Other Commerce Department agencies that work on intellectual property issues include the International Trade Administration (ITA), the National Telecommunications and Information Administration (NTIA), and the Bureau of Industry and Security (BIS).

The Administration will continue to work to ensure that the federal government’s intellectual property efforts are focused and well-coordinated and that resources are being used effectively and efficiently. As the Administration works to achieve meaningful progress, there are three important questions that should always be considered – What are we doing well? What isn’t working? And what should we be doing?

The Administration has made clear that our intellectual property enforcement policy includes all areas of intellectual property and innovation policy – copyrights, patents, trademarks, and trade secrets – and involves nearly every sector of our economy. Our strategic approach makes clear that our economic prosperity relies upon our leadership in technology and creativity, and we must protect our innovative economy from those who steal intellectual property and unfairly exploit the innovations of free societies.

As the United States government works to advance American economic interests overseas, a significant component of our enforcement and protection efforts includes addressing trade enforcement, market access, competition, digital trade, cybersecurity, and rule of law concerns in the intellectual property space, around the world. Additionally, American innovators and creators must be able to operate in foreign markets that provide them with clear paths to secure and use their IP. Countries and foreign companies should not be allowed to profit off of the theft or misappropriation of American intellectual property, including, for example, by trade secret theft, IP infringement, piracy, forced technology transfers or localization requirements. American brand holders must have full and fair ability to market and sell their products and use their properly registered trademarks across the globe, without undue restrictions.

On the domestic front, the Administration will continue to work to ensure that our intellectual property laws are kept up to date, and that they promote American innovation and creativity. Intellectual property is integral to our nation’s economic competitiveness and the growth of our innovative economy.



Additionally, a well-functioning patent system is important for our economy. The Administration is working to promote innovation and to ensure that we have strong and reliable patents, that the process for granting them is thorough, yet expeditious, and that any subsequent reviews by the courts or administrative agency is done fairly. The Supreme Court has ruled on a number of significant intellectual property cases in recent years. The Administration will continue to monitor how those decisions are being implemented by lower courts and executive branch agencies.

The Administration also continues to explore opportunities to engage with stakeholders on existing industry-led voluntary initiatives to protect American intellectual property, and to look at new areas for cooperation. On September 13, 2018, the U.S. Intellectual Property Enforcement Coordinator issued a Federal Register notice requesting public comments for the development of this 3-year strategic plan.⁵ These comments have been received and reviewed, and we have continued to engage with interested stakeholders and Congress throughout the preparation of this report.

We are at a defining moment in this new century, and that is why this Administration is advancing pro-growth policies, to protect our continued economic and innovative competitiveness, promote new engines of growth, and prioritize America's innovative and creative capacity.



⁵ IPEC, Request of the U.S. Intellectual Property Enforcement Coordinator for Public Comments: Development of the Joint Strategic Plan on Intellectual Property Enforcement, 83 FR 46522 (September 13, 2018) - <https://www.gpo.gov/fdsys/pkg/FR-2018-09-13/pdf/2018-19863.pdf>



ENGAGEMENT WITH OUR TRADING PARTNERS



“America has also finally turned the page on decades of unfair trade deals that sacrificed our prosperity and shipped away our companies, our jobs, and our Nation’s wealth. The era of economic surrender is over. From now on, we expect trading relationships to be fair and to be reciprocal. We will work to fix bad trade deals and negotiate new ones. And we will protect American workers and American intellectual property, through strong enforcement of our trade rules.”

- President Donald J. Trump⁶

During the past three and a half years President Trump has met with world leaders across the globe, consistently raising intellectual property issues with our trading partners. The President and his Administration have advocated strongly for free, fair and reciprocal trade.

The Trump Administration is continuing to counter unfair trade practices, utilizing all appropriate means from dialogue to enforcement tools, and “work with like-minded partners to preserve and modernize the rules of a fair and reciprocal economic order” and “emphasize fair trade enforcement actions when necessary, as well as multinational efforts to ensure transparency and adherence to international standards within trade and investment projects.”⁷

In China, President Trump “...discussed with President Xi the chronic imbalance in our relationship as it pertains to trade, and the concrete steps that [the U.S. and China] will jointly take to solve the problem of the massive trade distortion. This includes addressing China’s market access restrictions and technology transfer requirements, which prevent American companies from being able to fairly compete within China. The United States is committed to protecting the intellectual property of our companies and providing a level playing field for our workers.”⁸ As part of the United States’ continuing response to China’s theft of American intellectual property and forced transfer of American technology, and at the direction of President Trump, the U.S. has imposed several rounds of tariffs on Chinese goods. On January 15, 2020, the United States and China signed an historic and enforceable agreement on a Phase One trade deal that requires structural reforms and other changes to China’s economic and trade regime in the areas of intellectual property, technology transfer, agriculture, financial services, and currency and foreign exchange. In explaining this deal, USTR stated that, “President Trump has focused on concluding a Phase One agreement that achieves meaningful, fully-enforceable

⁶ President Donald J. Trump’s State of the Union Address (January 30, 2018) -

<https://www.whitehouse.gov/briefings-statements/president-donald-j-trumps-state-union-address/>

⁷ National Security Strategy, December 18, 2017 (page 20) - <https://www.whitehouse.gov/wp-content/uploads/2017/12/NSS-Final-12-18-2017-0905.pdf>

⁸ Remarks by President Trump and President Xi of China in Joint Press Statement (November 9, 2017) - <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-president-xi-china-joint-press-statement-beijing-china/>



structural changes and begins rebalancing the U.S.-China trade relationship. This unprecedented agreement accomplishes those very significant goals and would not have been possible without the President's strong leadership.”⁹

In September 2018, under the leadership of President Trump, the United States, Mexico and Canada reached an agreement to modernize the 24-year-old NAFTA into a 21st century, high-standard agreement. The United States-Mexico-Canada Agreement (USMCA) will support mutually beneficial trade leading to freer markets, fairer trade, and robust economic growth in North America. And the President has stated that “[t]he USMCA includes the strongest and most comprehensive intellectual property standards of any prior free trade agreement. Congress approved the agreement on January 16, 2020 and then on January 29, 2020, the President signed the USMCA Implementation Act. The USMCA will deliver comprehensive protections against misappropriation of trade secrets, robust border enforcement, and enhanced trademark, copyright, and patent provisions that are critical to driving innovation, creating economic growth, and supporting American jobs.”¹⁰

And, in October 2018, USTR announced that, “[u]nder President Trump's leadership, we will continue to expand U.S. trade and investment by negotiating trade agreements with Japan, the EU and the United Kingdom. Today's announcement is an important milestone in that process. We are committed to concluding these negotiations with timely and substantive results for American workers, farmers, ranchers, and businesses.”¹¹ As an initial outcome from the negotiations with Japan, United States Trade Representative Lighthizer and Ambassador Sugiyama on October 7, 2019, signed a new U.S.-Japan Trade Agreement and the U.S.-Japan Digital Trade Agreement.¹² The agreement on digital trade “will benefit trade in innovative products and services where the United States is a worldwide leader, and will ensure that American businesses have a level playing field in areas like video, music, e-books, and software.”¹³

The U.S. government continues to engage our partners in other countries on a range of intellectual property and related trade and law enforcement issues. In support of these efforts, the U.S. Intellectual Property Enforcement Coordinator has led multiple U.S. inter-agency delegations to South America, Asia, the Middle East, and Europe to address these issues and advocate for American IP interests abroad. The U.S. will continue to address these and other

⁹ USTR, United States and China Reach Phase One Trade Agreement (December 13, 2019) - <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2019/december/united-states-and-china-reach>

¹⁰ President Trump Proclaims April 25, 2019, as World Intellectual Property Day (April 25, 2019) - <https://www.whitehouse.gov/presidential-actions/proclamation-world-intellectual-property-day-2019/>

¹¹ Press Release: Trump Administration Announces Intent to Negotiate Trade Agreements with Japan, the European Union and the United Kingdom (October 16, 2018) - <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2018/october/trump-administration-announces>

¹² Remarks by President Trump at Signing of the U.S.-Japan Trade Agreement and U.S.-Japan Digital Trade Agreement (October 7, 2019) - <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-signing-u-s-japan-trade-agreement-u-s-japan-digital-trade-agreement/>

¹³ President Donald J. Trump Has Secured a Tremendous Victory For American Farmers and Businesses With New Japan Trade Agreements (October 7, 2019) - <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-secured-tremendous-victory-american-farmers-businesses-new-japan-trade-agreements/>



issues with those countries through bilateral engagements, including, for example, through the Trade and Investment Framework Agreements.

The Administration is also advancing intellectual property issues in multiple international organizations, including the Organization for Economic Cooperation and Development (OECD), World Intellectual Property Organization (WIPO), World Trade Organization (WTO), Asia-Pacific Economic Cooperation (APEC) Forum, the World Health Organization (WHO) and other international bodies.

In April 15, 2020, President Trump demanded accountability from the World Health Organization by putting a hold on U.S. funding citing “mismanagement, cover-ups, and failures” and calling for reform to address longstanding structural issues. The Administration is also “calling for reforms to promote transparency and data sharing, hold member states accountable for abiding by the International Health Regulations, increase access to medicines, and counter China’s outsized influence on the organization.”¹⁴ Further, on July 6, 2020, the United States notified the WHO Secretary-General of its intent to withdrawal from the organization as of July 6, 2021.

On October 17, 2018, the Administration announced that it was submitting a notice of withdrawal from the Universal Postal Union (UPU).¹⁵ As the Chairman of the Postal Regulatory Commission explained, “[t]he UPU continues to promulgate agreements that require posts to undercharge for delivery of inbound mail, to insulate postal shipments from full application of national customs laws, and to promote a different legal regime for postal operators and competing private carriers.”¹⁶ As the President explained in his memorandum of August 23, 2018, the current UPU system “distorts the flow of small packages around the world by incentivizing the shipping of goods from foreign countries that benefit from artificially low reimbursement rates”; as a result, “in many cases” – including when packages are shipped by air from China to the U.S. – the postal charges “are less than comparable domestic postage rates” for packages that are shipped entirely within the United States.¹⁷ For example, a small package is charged less to be shipped by air from China to the United States than when it is shipped entirely within the US. In addition to other negative impacts, this artificially low postage has significantly contributed to the rapid growth in recent years of counterfeits being shipped from China to the United States. The Administration’s notice of withdrawal was intended to address this and other problems. As the Postal Regulatory Commission’s Chairman explained, the Administration’s decision “is a tremendous step towards finally addressing these distortions on

¹⁴ Fact Sheet: President Donald J. Trump Is Demanding Accountability From the World Health Organization (April 15, 2020) - <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-demanding-accountability-world-health-organization/>

¹⁵ Statement from the White House Press Secretary (October 17, 2018) - <https://www.whitehouse.gov/briefings-statements/statement-press-secretary-38/>

¹⁶ Statement of Chairman Robert G. Taub, Postal Regulatory Commission (October 17, 2018) - https://www.prc.gov/sites/default/files/pr/Chairman%20Taub%20Statement%20on%20UPU_0.pdf

¹⁷ Presidential Memorandum of August 23, 2018, on “Modernizing the Monetary Reimbursement Model for the Delivery of Goods Through the International Postal System and Enhancing the Security and Safety of International Mail” - <https://www.whitehouse.gov/presidential-actions/presidential-memorandum-secretary-state-secretary-treasury-secretary-homeland-security-postmaster-general-chairman-postal-regulatory-commission/>



behalf of our fellow Americans – particularly U.S. merchants, U.S. mailers, and U.S. private-sector carriers who are trying to compete fairly in these global markets.”

Negotiations between the U.S. and other countries occurred throughout FY 2019. As a result of these negotiations, the member countries of the UPU agreed on September 25, 2019, to a significant change in the terminal dues system, allowing the United States to start setting its own postal fees in July 2020. This successful outcome “is aimed at eliminating economic distortions for the distribution of goods, by establishing parity with comparable domestic services for inbound packet volumes,” and “will also enable the Postal Service to support infrastructure development abroad that builds capacity for advance electronic customs data transmission and improvements in postal security” including through “concrete steps to ensure that the world’s posts will be better positioned to provide data from their customers that will help to reduce the use of the international mail system to transport dangerous contraband and counterfeit goods into the United States.”¹⁸

The United States conducts a number of international capacity building and training programs that leverage the resources of executive branch agencies and our embassies overseas. As the United States conducts these programs, it will be important for them to be designed toward achieving meaningful results on IP concerns raised, for example, in places such as the Annual USTR Special 301 Report.¹⁹ One example of U.S. capacity building is the USPTO’s Global Intellectual Property Academy (GIPA) that develops and provides programs that address a full range of IP protection and enforcement matters, including trademark, counterfeiting, copyright piracy (with an emphasis on online piracy), enforcement of IP rights at national borders, express mail shipments, trade secrets, copyright policy, and patent and trademark policy and examination.

The United States has networks of professionals around the world whose aim is to improve the protection and enforcement of intellectual property rights. For example, the State Department supports deployment of a U.S. Transnational and High Tech Crime Global Law Enforcement Network (GLEN), which features International Computer Hacking and Intellectual Property advisors – (ICHIPs), experienced Department of Justice prosecutors with responsibilities to strengthen U.S. law enforcement coordination and deliver capacity building assistance to key foreign law enforcement partners. The GLEN particularly focuses on combatting the growing role of transnational crime organizations in IP theft and cybercrime of all kinds, such as Dark Web markets where criminals use cryptocurrencies to hide their illicit gains.

¹⁸ Postmaster General Statement on the Universal Postal Union Agreement (September 25, 2019) - <https://about.usps.com/newsroom/statements/0925-postmaster-general-statement-on-the-universal-postal-union-agreement.htm>

¹⁹ 2019 Special 301 Report – Annual Review of the state of IP protection and enforcement in U.S. trading partners around the world, which the Office of the U.S. Trade Representative conducts pursuant to Section 182 of the Trade Act of 1974, as amended by the Omnibus Trade and Competitiveness Act of 1988, the Uruguay Round Agreements Act, and the Trade Facilitation and Trade Enforcement Act of 2015 (19 USC §2242). The 301 Report identifies foreign countries and exposes their laws, policies, and practices that fail to provide adequate and effective IP protection and enforcement. (https://ustr.gov/sites/default/files/2019_Special_301_Report.pdf)



The United States has taken unprecedented action through trade negotiations to ensure adequate and effective protection of intellectual property. We remain committed to continuing our work in this area and, below, we outline our strategy going forward.

STRATEGY GOING FORWARD

STRENGTHENING IP PROTECTION AND ENFORCEMENT THROUGH TRADE NEGOTIATIONS

The United States will continue to engage with our trading partners, and in international fora, to ensure free, fair and reciprocal trade, including the protection and enforcement of intellectual property.

- **USMCA**: The United States will continue to monitor the implementation and functioning of the United States-Mexico-Canada Agreement (USMCA).
- **United Kingdom**: The United States will continue to negotiate with the United Kingdom to enter into a free trade agreement now that the UK has withdrawn from the European Union.
- **European Union**: The United States will continue to engage with the European Union to ensure free, fair, and reciprocal trade, including the protection of intellectual property.
- **Japan**: As a follow-up to the agreement that the United States and Japan reached in September 2019, the United States will engage in further negotiations with Japan for a comprehensive agreement that addresses the areas of customs duties and other restrictions on trade, barriers to trade in services and investment, and other issues in order to promote mutually beneficial, fair, and reciprocal trade.
- **Kenya**: The United States will continue to engage with Kenya, as part of the recently announced free trade agreement negotiations,²⁰ to explore ways to deepen the trade and investment ties between the two countries.
- **India**: The United States will continue to engage with India to ensure free, fair and reciprocal trade, including the protection of intellectual property.
- **Other FTA Partners**: The United States will continue to monitor implementation and functioning of current Free Trade Agreements and address specific trade issues as they arise.

²⁰ Joint Statement between the United States and Kenya on the Launch of Negotiations Towards a Free Trade Agreement (July 8, 2020) - <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2020/july/joint-statement-between-united-states-and-kenya-launch-negotiations-towards-free-trade-agreement.htm>.



STRENGTHENING IP PROTECTION AND ENFORCEMENT THROUGH THE USG'S CAPACITY BUILDING AND TRAINING PROGRAMS

Federal agencies will continue to conduct international capacity building and training programs that leverage the resources of Federal agencies and our embassies overseas in order to strengthen IP protection and enforcement in other countries.

In conducting these programs, and in accordance with the PRO IP Act of 2008²¹ and the Foreign Aid Transparency and Accountability Act of 2016 (FATAA),²² the Federal agencies that provide funding for and/or carry out these programs by working together to design them (along with appropriate follow-up engagements and evaluations) so that these programs have a substantial likelihood of successfully achieving meaningful and timely results. Particular attention should be given to correcting the deficiencies in IP protection and enforcement that have been identified in USTR's annual Special 301 Report and the Notorious Markets List, in other USG reporting (by Econ Officers at US embassies, IP Attachés, ICHIPs, and Homeland Security Investigation (HSI) Attachés), and by IP rightsholders and other stakeholders.

In addition, Federal agencies will enhance their coordination with their counterparts in like-minded countries and with non-governmental entities that also provide capacity building and training programs. This enhanced coordination will maximize the impact and likely success of the USG's programs by avoiding duplication with the similar programs that other countries and non-governmental entities provide and also by leveraging the "lessons learned" that other

²¹ Section 303(f) of the PRO IP Act (15 U.S.C. § 8113) states that:

"(f) Enhancing enforcement efforts of foreign governments.

"The joint strategic plan shall include programs to provide training and technical assistance to foreign governments for the purpose of enhancing the efforts of such governments to enforce laws against counterfeiting and infringement. With respect to such programs, the joint strategic plan shall:

"(1) seek to enhance the efficiency and consistency with which Federal resources are expended, and seek to minimize duplication, overlap, or inconsistency of efforts;

"(2) identify and give priority to those countries where programs of training and technical assistance can be carried out most effectively and with the greatest benefit to reducing counterfeit and infringing products in the United States market, to protecting the intellectual property rights of United States persons and their licensees, and to protecting the interests of United States persons otherwise harmed by violations of intellectual property rights in those countries;

"(3) in identifying the priorities under paragraph (2), be guided by the list of countries identified by the United States Trade Representative under section 2242(a) of title 19; and

"(4) develop metrics to measure the effectiveness of the Federal Government's efforts to improve the laws and enforcement practices of foreign governments against counterfeiting and infringement."

²² Public Law 114-191. Pursuant to FATAA, the OMB Director issued government-wide guidelines on implementing the statute. See OMB Memorandum M-18-04, "Monitoring and Evaluation Guidelines for Federal Departments and Agencies that Administer United States Foreign Assistance" (January 11, 2018), at <https://www.whitehouse.gov/wp-content/uploads/2017/11/M-18-04-Final.pdf>.



countries and non-governmental entities have gained with respect to the factors that are likely to contribute to achieving successful results in strengthening IP protection and enforcement.

STRENGTHENING IP PROTECTION AND ENFORCEMENT THROUGH A “WHOLE-OF-GOVERNMENT” APPROACH TO THE USG’S ENGAGEMENTS WITH OTHER COUNTRIES

In order to maximize the impact of the USG’s personnel who are stationed overseas in correcting the deficiencies that the USG has identified in other countries’ IP protection and enforcement, Federal agencies will continue to employ a “whole-of-government” approach in which the agencies actively explore opportunities for expanding interagency information sharing, coordination, and cooperation amongst the various USG officials who have responsibilities for a given country or region: namely, State Department Officers, the IP Attachés, the ICHIPs, and the HSI Attachés, among others.

COMBATING THE TRAFFICKING OF COUNTERFEIT AND PIRATED GOODS THROUGH FREE TRADE ZONES

As USTR explained in its 2018 List of Notorious Markets, “[f]ree trade zones (FTZs) have become major facilitators of illegal and criminal activity, including the illicit trade in pirated and counterfeit goods, smuggling, and money laundering,” and “[t]he lack of consistent and effective IP enforcement in FTZs, especially the re-exportation and transshipment of infringing goods in and through certain FTZs, remains an important problem.”

Federal agencies – including the USG’s resources around the globe (the Econ Officers at US embassies, IP Attachés, I-CHIPs, HSI Attachés, and others) – will continue to work with their foreign government counterparts and non-governmental entities (including sea shippers) to combat the trafficking of counterfeit and pirated goods through FTZs.

COMBATING COUNTERFEIT MEDICINES

In many foreign countries, counterfeit medicines are widely available and pose a serious threat to public health and safety – not only for the people in those countries, but also for persons in neighboring countries and throughout the world. In addition, illicit online pharmacies facilitate the purchase of dangerous or ineffective medicines by unknowing consumers.

Federal agencies will continue to work with their foreign counterparts and non-governmental entities to combat this scourge of substandard and falsified drugs, including through law enforcement cooperation, information sharing, and capacity building and training programs.



COMBATING THE UNAUTHORIZED USE OF SOFTWARE IN OTHER COUNTRIES, INCLUDING BY FOREIGN GOVERNMENTS

Federal agencies – including the USG’s resources around the globe (State Department Officers at U.S. embassies, missions and consulates, IP Attachés, ICHIPs, HSI Attachés, and others) – will continue to work with their foreign government counterparts and non-governmental entities to combat the unauthorized use of copyrighted software, including the use of such software by foreign government offices.

ENHANCING THE EFFECTIVENESS OF INTELLECTUAL PROPERTY SYSTEMS ABROAD

With the ever-increasing expansion of American companies into markets abroad, it is important for the U.S. to continue to promote strong and effective intellectual property protection and enforcement worldwide. Federal agencies will continue to work with their foreign counterparts to encourage policies and practices that support efficient intellectual property systems around the world to the benefit of both domestic and foreign innovators. An example of this type of cooperation, in the patent arena, is the recent agreement between the United States Patent and Trademark office (USPTO) and the Mexican Institute of Industrial Property (IMPI). Under that Memorandum of Understanding (MOU), the parties intend to collaborate on a novel approach to patent work sharing. The USPTO has entered into patent work-sharing arrangements with numerous patent offices throughout the world. This MOU builds on these past efforts by enhancing examination efficiencies through the optimal reuse of USPTO work product by IMPI.





EFFECTIVE USE OF ALL OUR LEGAL AUTHORITIES, INCLUDING OUR TRADE TOOLS



"We cannot have free and open trade if some countries exploit the system at the expense of others. We support free trade, but it needs to be fair and it needs to be reciprocal. Because, in the end, unfair trade undermines us all. The United States will no longer turn a blind eye to unfair economic practices, including massive intellectual property theft... These and other predatory behaviors are distorting the global markets and harming businesses and workers, not just in the U.S., but around the globe."

- President Donald J. Trump²³

President Trump and his Administration are standing strong against the theft of American IP and remain committed to protecting our innovative economy. President Trump has expressed that we need to address the unfair trade practices that drive, not only our trade deficit, but the barriers to market access. "We really have to look at access, forced technology transfer, and the theft of intellectual property, which just, by and of itself, is costing the United States and its companies at least \$300 billion a year."²⁴

IP theft not only damages American companies, but it also threatens our national security. Promoting American prosperity is a pillar of the Administration's National Security Strategy (NSS). The NSS states that "America will no longer tolerate chronic trade abuses and will pursue free, fair, and reciprocal economic relationships. To succeed in this 21st century geopolitical competition, America must lead in research, technology, and innovation. We will protect our national security innovation base from those who steal our intellectual property and unfairly exploit the innovation of free societies."²⁵

The NSS highlights that "[e]very year, competitors such as China steal U.S. intellectual property valued at hundreds of billions of dollars. Stealing proprietary technology and early-stage ideas allows competitors to unfairly tap into the innovation of free societies."²⁶ The NSS lists the protection of intellectual property as a priority action. "The United States will reduce the illicit

²³ Remarks by President Trump to the World Economic Forum (January 26, 2018) -

<https://www.whitehouse.gov/briefings-statements/remarks-president-trump-world-economic-forum/>

²⁴ Remarks by President Trump at Business Event with President Xi of China (November 9, 2017) -

<https://www.whitehouse.gov/briefings-statements/remarks-president-trump-business-event-president-xi-china-beijing-china/>

²⁵ President Donald J. Trump Announces a National Security Strategy to Advance America's Interests (December 18, 2017) - <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-announces-national-security-strategy-advance-americas-interests/>

²⁶ National Security Strategy (December 18, 2017) (page 21) - <https://www.whitehouse.gov/wp-content/uploads/2017/12/NSS-Final-12-18-2017-0905.pdf>



appropriation of U.S. public and private sector technology and technical knowledge by hostile foreign competitors. While maintaining an investor-friendly climate, this Administration will work with the Congress to strengthen the Committee on Foreign Investment in the United States (CFIUS) to ensure it addresses current and future national security risks. The United States will prioritize counterintelligence and law enforcement activities to curtail intellectual property theft by all sources and will explore new legal and regulatory mechanisms to prevent and prosecute violations.”²⁷

In August 2017, President Trump directed the United States Trade Representative to investigate China’s laws, policies, practices, and actions that may be unreasonable or discriminatory and that may be harming American intellectual property rights, innovation, or technology development. On August 18, 2017, the Trade Representative initiated an investigation under section 301 of the Trade Act of 1974 (19 U.S.C. 2411).²⁸

In March 2018, USTR released the findings of its exhaustive investigation; USTR found that China’s acts, policies, and practices related to technology transfer, intellectual property and innovation are unreasonable and discriminatory and burden or restrict U.S. commerce.²⁹ Based on these findings, the President issued a memorandum that directed the U.S. Trade Representative to take all appropriate action under Section 301, including considering increased tariffs on goods from China and pursuing dispute settlement proceedings in the WTO.³⁰ Initially the U.S. imposed a 25 percent duty that affected \$34 billion in Chinese imports. That was followed by a second round of tariffs on \$16 billion in Chinese goods. Starting September 24, 2018, and in response to China’s refusal to eliminate its acts, policies, and practices, tariffs on another \$200 billion in Chinese imports went into effect initially set at a rate of 10 percent.³¹ The rate was initially scheduled to increase to 25 percent effective January 1, 2019. At the direction of the President, the Trade Representative postponed the increase in the rate of additional duty for this third tranche of products in light of progress in discussions with China, but, on May 10, 2019, increased the level to 25 percent after China retreated from specific commitments agreed to in earlier rounds of negotiations. In May 2019, USTR requested comment and, in June 2019, held a public hearing on a proposed tariff modification to add an *ad valorem* duty of up to 25 percent on additional products of China with an annual trade value of approximately \$300 billion. In August 2019, the Trade Representative, at the direction of the President, determined to modify the action being taken in the investigation by imposing an additional 10 percent *ad valorem* duty, which was subsequently increased to 15 percent, on

²⁷ National Security Strategy, December 18, 2017 (pages 21-22) - <https://www.whitehouse.gov/wp-content/uploads/2017/12/NSS-Final-12-18-2017-0905.pdf>

²⁸ Presidential Memorandum to U.S. Trade Representative (August 14, 2017) -

<https://www.whitehouse.gov/presidential-actions/presidential-memorandum-united-states-trade-representative/>

²⁹ USTR, Findings Of The Investigation Into China’s Acts, Policies, And Practices Related To Technology Transfer, Intellectual Property, and Innovation Under Section 301 of the Trade Act of 1974 (March 22, 2018) - <https://ustr.gov/sites/default/files/Section%20301%20FINAL.PDF>

³⁰ Presidential Memorandum on the Actions by the United States Related to the Section 301 Investigation (March 22, 2018) - <https://www.whitehouse.gov/presidential-actions/presidential-memorandum-actions-united-states-related-section-301-investigation/>

³¹ Press Release: USTR Finalizes Tariffs on \$200 Billion of Chinese Imports in Response to China’s Unfair Trade Practices (September 19, 2018) - <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2018/september/ustr-finalizes-tariffs-200>



products of China with an annual aggregate trade value of approximately \$300 billion. The Trade Representative also received public comments regarding a proposed modification to increase the rate of additional duty from 25 percent *ad valorem* to 30 percent *ad valorem* on goods of China covered by the three prior tariff actions, with an approximate annual trade value of \$250 billion.³²

USTR explained the need to take these tariff actions, in response to China's unfair trade practices:

“We must take strong defensive actions to protect America’s leadership in technology and innovation against the unprecedented threat posed by China’s theft of our intellectual property, the forced transfer of American technology, and its cyber-attacks on our computer networks. China’s government is aggressively working to undermine America’s high-tech industries and our economic leadership through unfair trade practices and industrial policies like ‘Made in China 2025.’ Technology and innovation are America’s greatest economic assets and President Trump rightfully recognizes that if we want our country to have a prosperous future, we must take a stand now to uphold fair trade and protect American competitiveness.”³³

On January 15, 2020, the United States and China signed a Phase One trade agreement that requires structural reforms and other changes to China’s economic and trade regime in the areas of intellectual property, technology transfer, agriculture, financial services, and currency and foreign exchange. In light of progress in the negotiations with China, and at the direction of the President, the Trade Representative determined to suspend indefinitely the imposition of the additional duties of 15 percent on \$160 billion of Chinese goods that had been scheduled for December 15, 2019. In addition, the United States will be reducing from 15 percent to 7.5 percent the tariffs that it imposed on \$120 billion of Chinese goods on September 1, 2019.³⁴

The Trump Administration is committed to promoting free, fair, and reciprocal economic relationships. “The United States will pursue bilateral trade and investment agreements with countries that commit to fair and reciprocal trade and will modernize existing agreements to

³² USTR, Notice of Modification of Section 301 Action: China’s Acts, Policies, And Practices Related To Technology Transfer, Intellectual Property, and Innovation, 84 FR 43304 (August 20, 2019) - <https://www.govinfo.gov/content/pkg/FR-2019-08-20/pdf/2019-17865.pdf>; USTR, Notice of Modification of Section 301 Action: China’s Acts, Policies, And Practices Related To Technology Transfer, Intellectual Property, and Innovation, 84 FR 45821 (August 30, 2019) - <https://www.govinfo.gov/content/pkg/FR-2019-08-30/pdf/2019-18838.pdf>; USTR, Request for Comments Concerning Proposed Modification of Action Pursuant to Section 301: China’s Acts, Policies, And Practices Related To Technology Transfer, Intellectual Property, and Innovation, 84 FR 46212 (September 3, 2019) - <https://www.govinfo.gov/content/pkg/FR-2019-09-03/pdf/2019-18946.pdf>

³³ Press Release: USTR Issues Tariffs on Chinese Products in Response to Unfair Trade Practices (June 15, 2018) - <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2018/june/ustr-issues-tariffs-chinese-products>

³⁴ USTR, United States and China Reach Phase One Trade Agreement (December 13, 2019) - <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2019/december/united-states-and-china-reach>; USTR, Notice of Modification of Section 301 Action: China’s Acts, Policies, And Practices Related To Technology Transfer, Intellectual Property, and Innovation, 84 FR 69447 (December 18, 2019) - <https://www.govinfo.gov/content/pkg/FR-2019-12-18/pdf/2019-27306.pdf>



ensure they are consistent with those principles. Agreements must adhere to high standards in intellectual property, digital trade, agriculture, labor, and the environment.”³⁵

USTR engages closely with the Office of the U.S. Intellectual Property Enforcement Coordinator and other U.S. government agencies on intellectual property matters. USTR continues to lead trade agreement negotiations; reviews under U.S. trade preference programs such as the Generalized System of Preferences (GSP) and the Africa Growth and Opportunity Act (AGOA); on trade policy reviews undertaken at the World Trade Organization; and in highlighting intellectual property enforcement deficiencies in foreign markets, and notorious e-commerce and physical markets trafficking in counterfeit and pirated goods.

USTR also works closely with executive branch departments and agencies to prepare the Annual Special 301 report that identifies U.S. trading partners that do not adequately protect intellectual property rights, and to compile the annual Notorious Markets list, that highlights prominent online and physical marketplaces, outside the United States, that engage in and facilitate substantial piracy and counterfeiting. The Annual Special 301 report provides a review of the state of IP protection and enforcement in U.S. trading partners around the world. The report calls out foreign countries and exposes the laws, policies, and practices that fail to provide adequate and effective IP protection and enforcement for U.S. inventors, creators, brands, manufacturers, and service providers.³⁶ The Out of Cycle Review of Notorious Markets highlights prominent examples of foreign “online and physical marketplaces that reportedly engage in, facilitate, turn a blind eye to, or benefit from substantial piracy and counterfeiting.”³⁷ The list includes a number of foreign e-commerce sites and physical markets where pirated or counterfeit goods are available.

The International Trade Commission (ITC) is an independent quasi-judicial federal agency with broad investigative responsibilities on matters of trade. Section 337 of the Tariff Act of 1930 provides for relief against unfair acts and unfair methods of competition in the importation of articles, including articles that infringe a U.S. patent or a U.S. trademark. A complainant in a Section 337 action may seek an order to exclude from entry into the United States infringing imported articles found to violate section 337.

The ITC is authorized to issue remedial orders in the form of exclusion orders and cease-and-desist orders. The USTR, under authority delegated by the President, may disapprove such exclusion orders for policy reasons. The ITC handles a significant number of patent disputes pursuant to Section 337 and the Commission’s procedural rules.³⁸

The World Trade Organization provides a forum for enforcing U.S. rights under various WTO agreements to ensure that the United States receives the full benefits of WTO membership.

³⁵ National Security Strategy, December 18, 2017 (page 20) - <https://www.whitehouse.gov/wp-content/uploads/2017/12/NSS-Final-12-18-2017-0905.pdf>

³⁶ 2018 Special 301 Report (April 25, 2019) - <https://ustr.gov/sites/default/files/files/Press/Reports/2018%20Special%20301.pdf>

³⁷ 2018 Out of Cycle Review of Notorious Markets (April 25, 2019) - https://ustr.gov/sites/default/files/2018_Notorious_Markets_List.pdf

³⁸ 19 CFR Part 210



These WTO agreements also provide a foundation for high-standard U.S. bilateral and regional agreements that make a positive contribution to a free, fair and open global trading system based on the rule of law. In regards to intellectual property rights, the WTO provides a venue for the United States to engage with trading partners on key IP issues, including through accession negotiations for prospective Members, the Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS Council), and by bringing IPR-related cases before the WTO's Dispute Settlement Body. On March 23, 2018, the United States initiated dispute settlement proceedings against China concerning its discriminatory technology licensing requirements.³⁹ In its request for consultations, the United States identified breaches by China of WTO rules, harming the intellectual property rights of U.S. companies and innovators. On October 18, 2018, the United States requested that the WTO establish a panel to examine the U.S. complaint after consultations did not resolve the matter.⁴⁰ The WTO composed the dispute settlement panel on January 16, 2019. In March 2019, China revised the measures that the United States had challenged. On June 18, 2020, the WTO panel informed the Dispute Settlement Body that it had accepted a request from the parties to suspend the dispute, in light of ongoing consultations between the parties.⁴¹

As noted above, the National Security Strategy – issued in December 2017 – stated that “this Administration will work with the Congress to strengthen the Committee on Foreign Investment in the United States (CFIUS) to ensure it addresses current and future national security risks.”⁴² CFIUS is an interagency committee authorized to review certain transactions in order to determine the effect of such transactions on the national security of the United States.

In 2018, Congress passed the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA), which the President signed into law on August 13, 2018. As the President explained, “[t]his new authority will enhance our ability to protect cutting-edge American technology and intellectual property vital to our national security. . . . I’m pleased this new legislation provides the Committee on Foreign Investment in the United States greater authority when it comes to reviewing foreign ownership of American firms with critical technology and intellectual property.”⁴³ In 2020, final regulations implementing FIRRMA went into effect.

A CFIUS review can be initiated voluntarily when parties to a transaction that might raise national security concerns file a voluntary notice with CFIUS, or when parties file a transaction that is subject to a mandatory filing obligation. Additionally, CFIUS can unilaterally initiate

³⁹ Press Release: Following President Trump’s Section 301 Decisions, USTR Launches New WTO Challenge Against China (March 23, 2018) - <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2018/march/following-president-trump%E2%80%99s-section>.

⁴⁰ Request for the Establishment of a Panel by the United States, *China – Certain Measures Concerning the Protection of Intellectual Property Rights* (WT/DS542/8) - https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds542_e.htm

⁴¹ Communication from the Panel, *China – Certain Measures Concerning the Protection of Intellectual Property Rights* (WT/DS542/14) - https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds542_e.htm.

⁴² National Security Strategy, December 18, 2017 (page 22) - <https://www.whitehouse.gov/wp-content/uploads/2017/12/NSS-Final-12-18-2017-0905.pdf>

⁴³ Remarks by President Trump at a Roundtable on the Foreign Investment Risk Review Modernization Act (FIRRMA) (August 23, 2018) - <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-roundtable-foreign-investment-risk-review-modernization-act-firma/>



review of a transaction. If CFIUS determines that the transaction presents national security risks that cannot be adequately resolved by other laws or through mitigation measures, which may be implemented by agreement or imposed by CFIUS through an appropriate order, then CFIUS may refer the transaction to the President. The President may suspend or prohibit the transaction.

The United States has taken unprecedented action through our legal authorities to ensure adequate and effective protection of intellectual property. We remain committed to continuing our work in this area and, below, we outline our strategy going forward.

STRATEGY GOING FORWARD

THE U.S.-CHINA PHASE ONE AGREEMENT

The United States will monitor China's implementation of the Economic and Trade Agreement Between the Government of the United States and the Government of the People's Republic of China ("Phase One Agreement"). The Phase One Agreement requires China to revise its legal and regulatory regimes in a number of ways, including in the areas of trade secrets, patents, pharmaceutical-related IP, trademarks, and geographical indications. In addition, the agreement requires China to make numerous changes to its judicial procedures, to establish deterrent-level penalties, and to improve enforcement against pirated and counterfeit goods.

TRADE SECRETS

The Phase One Agreement strengthens protections for trade secrets and enforcement against trade secret theft in China. In particular, the chapter on intellectual property requires China to expand the scope of civil liability for misappropriation beyond entities directly involved in the manufacture or sale of goods and services, to cover acts such as electronic intrusions as prohibited acts of trade secret theft, to shift the burden of producing evidence or burden of proof in civil cases to the defendants when there is a reasonable indication of trade secret theft, to make it easier to obtain preliminary injunctions to prevent the use of stolen trade secrets, to allow for initiation of criminal investigations without the need to show actual losses, to ensure that criminal enforcement is available for willful trade secret misappropriation, and to prohibit government personnel or third party experts or advisors from engaging in the unauthorized disclosure of undisclosed information, trade secrets, and confidential business information submitted to the government.

ONLINE COPYRIGHT PROTECTION

The Phase One Agreement requires China to provide effective and expeditious action against infringement in the online environment, including by requiring expeditious takedowns and by ensuring the validity of notices and counter notices. It also requires China to take effective action against e-commerce platforms that fail to take necessary measures against infringement. The United States and China agreed to address additional intellectual property issues, including with regard to unauthorized camcording of motion pictures and copyright protection for sporting event broadcasts, in future negotiations.



SOFTWARE PIRACY

The Phase One Agreement requires China to ensure, through third party audits, that government agencies and state-owned enterprises only use licensed software.

TRADEMARK AND COUNTERFEITING ISSUES

The Phase One Agreement requires China to address longstanding U.S. concerns regarding bad-faith trademark registration, such as by invalidating or refusing bad faith trademark applications.

Further, the Phase One Agreement requires China to take effective enforcement action against counterfeit pharmaceuticals and related products, including active pharmaceutical ingredients, and to significantly increase actions to stop the manufacture and distribution of counterfeits with significant health or safety risks. The agreement also requires China to provide that its judicial authorities shall order the forfeiture and destruction of pirated and counterfeit goods, along with the materials and implements predominantly used in their manufacture. In addition, the agreement requires China to significantly increase the number of enforcement actions at physical markets in China and against goods that are exported or in transit.

PHARMACEUTICALS

As part of the Phase One Agreement, the two sides agreed that China would establish a nationwide mechanism for the early resolution of potential pharmaceutical patent disputes that is to cover both small molecule drugs and biologics, including a cause of action to allow a patent holder to seek expeditious remedies before the marketing of an allegedly infringement product. Going forward, the United States will work closely with U.S. industry to monitor developments and to ensure that China's new system works as contemplated.

The Phase One Agreement also provides patent term extensions to compensate for unreasonable patent and marketing approval delays that cut into the effective patent term, and it permits the use of supplemental data to meet relevant patentability criteria for pharmaceutical patent applications. The United States and China agreed to address data protection for pharmaceuticals in future negotiations.

GEOGRAPHICAL INDICATIONS (GIs)

The Phase One Agreement requires China to ensure that any GI measures taken in connection with an international agreement do not undermine market access for U.S. exports to China using trademarks and generic terms. It also requires China to use relevant factors when making determinations for genericness, including usage of a term in dictionaries, newspapers and websites, how the good referred to by a term is marketed and used in trade, and whether the term is used in relevant standards. In addition, it requires China not to provide GI protection to individual components of multi-component terms if the individual component is generic and to identify publicly which individual components are not protected when granting GI protection to multi-component terms.



BORDER ENFORCEMENT

The Phase One Agreement requires China to significantly increase the number of enforcement actions against pirated and counterfeit goods that are exported or in transit. It also requires China to significantly increase training of relevant customs personnel.

TRADE TRANSPARENCY UNIT (TTU) AGREEMENTS WITH OTHER COUNTRIES

HSI's Trade Transparency Unit (TTU) was created in 2004 and establishes TTUs in partner countries to share trade data to detect trade-based money laundering and sanctions violations as well as commercial smuggling and other crimes that generate illicit proceeds. TTUs detect suspicious transaction and financial discrepancies and coordinate investigative and enforcement activities with domestic and international HSI offices and partners. Formal information sharing agreements are used to exchange valuable trade data, providing visibility to both sides of trade transactions. As such, TTUs offer another means to link international customs and law enforcement agencies together in combating transnational crime, including the trafficking in counterfeit and pirated goods.

HSI has entered into TTU agreements with seventeen countries: Argentina, Australia, Brazil, Colombia, Chile, Dominican Republic, Ecuador, France, Guatemala, Mexico, New Zealand, Panama, Paraguay, Peru, Philippines, United Kingdom, and Uruguay. HSI will continue to engage with other countries to establish additional TTU agreements.

REVIEW OF INTERNET SAFE HARBORS

The Trump Administration continues to review the Internet safe harbors that were enacted during the infancy of the Internet – Section 230 of the Communications Decency Act (1996) and Section 512 of the Digital Millennium Copyright Act (1998), including examining its impact on IP protection and enforcement.

Another area of interest, includes examining State product-liability laws with respect to the application of these laws to e-commerce platforms that sell American consumers counterfeit goods that can be defective and harm the health and safety of the product's users, family, and others. Also, with respect to the brick-and-mortar world, we continue to examine state landlord liability laws, with respect to the potential liability – and related duty of care – of landlords for the sale of IP-infringing goods by their tenants.





EXPANDED LAW ENFORCEMENT ACTION AND COOPERATION



“The theft of intellectual property by foreign countries costs our Nation millions of jobs and billions and billions of dollars each and every year. For too long, this wealth has been drained from our country... Washington will turn a blind eye no longer.”

- President Donald J. Trump⁴⁴

United States law enforcement agencies are taking strong action against criminal enterprises that engage in IP theft, and improving both international and domestic enforcement efforts. The Trump Administration’s intellectual property enforcement efforts bring together the Department of Justice, Department of Homeland Security, the Department of Health and Human Services’ Food and Drug Administration (FDA), and other executive branch law enforcement agencies, to protect American innovation and intellectual property.

The Department of Justice (DOJ) investigates and prosecutes a wide range of IP crimes, including those involving copyright piracy, trademark counterfeiting, and trade secret theft. Primary investigative and prosecutorial responsibility within the Department rests with the Federal Bureau of Investigation (FBI), the United States Attorneys’ Offices, the Computer Crime and Intellectual Property Section (CCIPS) in the Criminal Division, the Counterintelligence and Export Control Section (CES) in the National Security Division, and, with regard to offenses arising under the Food, Drug, and Cosmetic Act, the Consumer Protection Branch of the Civil Division. DOJ also has a network of 270 specially trained federal prosecutors who make up the Department’s Computer Hacking and Intellectual Property (CHIP) program.

DOJ’s Civil Division brings affirmative cases when United States’ IP is infringed. The Civil Division initiates civil actions to recover various penalties or customs duties arising from negligent or fraudulent import transactions, which include counterfeit goods; defends U.S. Customs and Border Protection (CBP) enforcement of the International Trade Commission’s (ITC) Section 337 exclusion orders at the Court of International Trade (these orders are a key patent enforcement tool); conducts civil and criminal litigation under the Food, Drug, and Cosmetic Act, including prosecuting counterfeit drug and medical device offenses; and assists Assistant United States Attorneys (AUSAs) throughout the country with their counterfeit pharmaceutical and device cases.

The Department of Homeland Security (DHS), through CBP and U.S. Immigration and Customs Enforcement-Homeland Security Investigations (ICE-HSI), stands at the forefront of enforcing U.S. intellectual property rights (IPR) at our borders to defend American innovation

⁴⁴ Remarks by the President on Signing a Memorandum on Addressing China’s Laws, Policies, Practices, and Actions Related to Intellectual Property, Innovation, and Technology (August 14, 2017) - <https://www.govinfo.gov/content/pkg/DCPD-201700571/pdf/DCPD-201700571.pdf>



from infringement and illegal trade practices. The enforcement of IPR supports U.S. public health and safety, promotes economic prosperity, and preserves domestic and international security.

CBP's strategy to enforce IPR is built on the pillars of facilitation, enforcement, and deterrence. CBP's strategic approach focuses on collaborative efforts to educate and engage stakeholders to deter the importation of illicit goods and employs innovative approaches to enforce IPR law at all ports of entry. In implementing this strategy, CBP has deployed new tools that have enabled officers to expeditiously determine whether suspected counterfeit or pirated merchandise is authentic.

ICE-HSI investigates IPR violations involving the illegal production, smuggling, and distribution of counterfeit merchandise and pirated works. A significant majority of infringing and dangerous products are produced overseas and are either shipped directly to the United States or arrive at the United States via a third country. ICE HSI Special Agents' critical role in investigating IPR violations utilizes their traditional customs authorities and their expertise regarding the illicit importation and exportation of merchandise.

The National Intellectual Property Rights Coordination Center⁴⁵ (IPR Center), a joint enforcement collaboration led by the Department of Homeland Security (ICE-HSI), brings government agencies together to share information, leverage resources, and train investigators, prosecutors, and the public on IP. To ensure that U.S. government prosecutorial and law enforcement resources are used efficiently and effectively, and are not duplicative, the IPR Center also serves as an investigation clearinghouse for the FBI, ICE-HSI, CBP, FDA, and other agencies.

The IPR Center also conducts an aggressive international program to promote cooperative enforcement efforts with our trading partners and to improve substantive laws and enforcement regimes in other countries. Additionally, the IPR Center continues to engage industry in an open and on-going dialogue. Through this approach, the IPR Center utilizes both law enforcement efforts and private industry collaboration to effectively combat intellectual property crimes. The IPR Center has developed numerous initiatives and interdiction efforts to combat the infiltration of counterfeits. These efforts are focused on counterfeits that pose a risk to the health and safety

⁴⁵ The federal member agencies of the IPR Center include: U.S. Customs and Border Protection, the Federal Bureau of Investigation, INTERPOL Washington-the U.S. National Central Bureau (USNCB), the United States Postal Inspection Service, the Food and Drug Administration's Office of Criminal Investigations, the Department of Commerce's International Trade Administration, the Naval Criminal Investigative Service, the Defense Criminal Investigative Service, the Defense Logistics Agency's Office of Inspector General, U.S. Immigration and Customs Enforcement's Homeland Security Investigations, the United States Nuclear Regulatory Commission, the United States Patent and Trademark Office, the General Service Administration's Office of Inspector General, the Consumer Product Safety Commission, the National Aeronautics and Space Administration's Office of Inspector General, the Department of State's Office of International Intellectual Property Enforcement, the Army Criminal Investigation Command's Major Procurement Fraud Unit, the Air Force Office of Special Investigations, the U.S. Postal Service Office of Inspector General, the Federal Maritime Commission, and the Department of Veterans Affairs. The four international members of the IPR Center are Europol, the Mexican Revenue Service, the Royal Canadian Mounted Police, and the City of London Police.



of the consumer, counterfeits entering the U.S. Department of Defense (DOD) and U.S. Government supply chains, and the protection of the U.S. economy.

The United States government has engaged in a number of training programs for federal, state, and local prosecutors and agents investigating IP crimes. These training courses cover a range of IP enforcement issues and are designed to increase coordination between prosecutors and investigators as well as coordination among federal, state, and local law enforcement agencies.

The growth of e-commerce has led to an exponential increase in the volume of cargo being sent as small packages, a significant percentage of which is counterfeit or illicit. In the face of this immense challenge, our customs officers are on the frontlines monitoring, targeting, and seizing illicit and counterfeit goods at our international mail facilities and other ports of entry.

DOJ and DHS continue to prioritize IP investigations and prosecutions that involve (1) health and safety, (2) trade secret theft or economic espionage, and (3) large-scale commercial counterfeiting and online piracy. They have also increased focus on IP crimes that are committed or facilitated by use of the Internet or perpetrated by organized criminal networks.

The health and safety initiative, under the auspices of ICE-HSI Operations Apothecary, Engine Newity, and Chain Reaction, brings together private, state, and federal enforcement resources to address the proliferation of counterfeit goods posing a danger to consumers, including counterfeit and illegally prescribed pharmaceuticals, automotive parts, and military goods, respectively. DOJ prosecutors and the FBI have continued to emphasize the investigation and prosecution of commercial and state-sponsored trade secret theft. This has led to the investigation and prosecution of numerous trade secret thefts and economic espionage cases. DOJ and DHS continue to pursue significant, large-scale piracy and counterfeiting operations.

Global IP crime, from the manufacture and worldwide distribution of counterfeit goods, to the sprawling online businesses designed to reap profits from the illegal distribution of copyrighted works, continues to grow and change in an effort to stay ahead of law enforcement. The United States is working actively to develop training and technical assistance programs to assist other countries in effectively enforcing IP laws and reducing the trafficking of counterfeit and pirated goods.

Executive Branch agencies, including DOJ, Commerce, State, and Homeland Security have provided training to foreign officials on effective enforcement of IP laws. IP trainings are designed to increase cooperation between various law enforcement agencies with responsibility for IP offenses; to utilize various types of charges, including economic and organized crime statutes to combat IP crime; and to increase awareness amongst enforcement officials and the judiciary of the importance of reducing counterfeiting and piracy.

ICE-HSI Attachés establish strong working relationships with host country counterparts. These relationships strengthen ICE's capacity to conduct successful domestic, international, and multilateral operations. ICE-HSI Attachés are located in over 50 countries.



DOJ, in coordination with other federal investigatory agencies, is working with the International Organized Crime Intelligence and Operations Center to provide data to the Center to address intelligence gaps as they relate to IP. The Center has provided operational, intelligence, and financial support to investigations where international organized crime groups are involved in IP offenses.

The U.S. Transnational and High Tech Crime Global Law Enforcement Network, which features International Computer Hacking and Intellectual Property (ICHIP) advisors, Global Cyber Forensics Advisors and long term agent mentors, funded by the Department of State and jointly managed with the Department of Justice, is improving the effectiveness of U.S. personnel serving abroad by training foreign prosecutors, judges, customs and border officials, and police.⁴⁶ Such training has resulted in multiple overseas prosecutions of trademark counterfeiting and copyright piracy. The program first created under the Bush Administration in 2006 with a single office in Thailand, has now been expanded under the Trump Administration with the United States now deploying twelve ICHIPs (one funded by DOJ) working collaboratively within and across their regions to mitigate threats to IP protections, including those involving transnational organized crime. In addition to two ICHIPs who are deployed in Washington DC, ICHIPs are stationed in (1) Hong Kong, China SAR; (2) São Paulo, Brazil; (3) Bucharest, Romania; (4) Bangkok, Thailand; (5) Abuja, Nigeria; (6) Kuala Lumpur, Malaysia; (7) The Hague, Netherlands; (8) Zagreb, Croatia; (9) Addis Ababa, Ethiopia; and (10) Panama City, Panama.

The protection of intellectual property is especially critical for maintaining U.S. competitiveness in this digital age. As the Administration explained in the National Cyber Strategy that the White House issued on September 20, 2018, “[f]ostering and protecting American invention and innovation is critical to maintaining the United States’ strategic advantage in cyberspace”:

“Strong intellectual property protections ensure continued economic growth and innovation in the digital age. The United States Government has fostered and will continue to help foster a global intellectual property rights system that provides incentives for innovation through the protection and enforcement of intellectual property rights such as patents, trademarks, and copyrights.”⁴⁷

Cyber-enabled theft of intellectual property, particularly trade secrets, inflicts a significant cost to the U.S. economy, in addition to the immeasurable harm the theft of IP may cause individual companies. The Administration is committed to combatting the cyber-enabled theft of trade secrets and other confidential business information. As the National Cyber Strategy states:

“The United States Government will also promote protection of sensitive emerging technologies and trade secrets, and we will work to prevent adversarial nation states from gaining unfair advantage at the expense of American research and development. . . . For

⁴⁶ Global Cyber and Intellectual Property Crimes, U.S. Department of Justice - <https://www.justice.gov/criminal-opdat/global-cyber-and-intellectual-property-crimes>

⁴⁷ White House, National Cyber Strategy of the United States of America (September 2018) (page 16) - <https://www.whitehouse.gov/wp-content/uploads/2018/09/National-Cyber-Strategy.pdf>



more than a decade, malicious actors have conducted cyber intrusions into United States commercial networks, targeting confidential business information held by American firms. Malicious cyber actors from other nations have stolen troves of trade secrets, technical data, and sensitive proprietary internal communications. The United States Government will work against the illicit appropriation of public and private sector technology and technical knowledge by foreign competitors, while maintaining an investor-friendly climate.”⁴⁸

The Department of Justice and the Department of Homeland Security are committed to aggressively investigating and prosecuting individuals and corporations who undermine American competitiveness by stealing what they did not themselves create and continues to focus its investigative and prosecutorial efforts on combatting the theft of the trade secrets of U.S. businesses.

On November 1, 2018, the Attorney General announced the creation of a China Initiative led by the National Security Division’s Assistant Attorney General, and composed of a senior FBI executive, five United States Attorneys, and several other Department of Justice leaders and officials, including the Criminal Division’s Assistant Attorney General. As the Attorney General explained, “[t]his Initiative will identify priority Chinese trade theft cases, ensure that we have enough resources dedicated to them, and make sure that we bring them to an appropriate conclusion quickly and effectively.”⁴⁹

The United States has taken unprecedented action through law enforcement action and cooperation to ensure adequate and effective protection of intellectual property. We remain committed to continuing our work in this area and, below, we outline our strategy going forward.

STRATEGY GOING FORWARD

COMBATING TRADE SECRET THEFT: THE NATIONAL CYBER STRATEGY AND THE JUSTICE DEPARTMENT’S CHINA INITIATIVE

Theft of intellectual property, particularly trade secrets, through cyber-enabled means continues to cause significant losses to the U.S. economy and individual companies. The Administration

⁴⁸ Id. (pages 16-17)

⁴⁹ Press Release: Attorney General Jeff Sessions Announces New Initiative to Combat Chinese Economic Espionage” (November 1, 2018) - <https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-announces-new-initiative-combat-chinese-economic-espionage>. See also “Attorney General Jeff Session’s China Initiative Fact Sheet” (November 1, 2018) - <https://www.justice.gov/opa/speech/file/1107256/download>; “Assistant Attorney General for National Security John C. Demers Delivers Remarks Regarding Economic Espionage by the People’s Republic of China” (November 1, 2018) - <https://www.justice.gov/opa/speech/assistant-attorney-general-national-security-john-c-demers-delivers-remarks-regarding>; “Assistant Attorney General Brian A. Benczkowski of the Criminal Division Delivers Remarks Regarding Chinese Economic Espionage” (November 1, 2018) - <https://www.justice.gov/opa/speech/assistant-attorney-general-brian-benczkowski-criminal-division-delivers-remarks-regarding>; and Remarks by FBI Director Wray, “Keeping Our Financial Systems Secure: A Whole-of-Society Response” (November 1, 2018) - <https://www.fbi.gov/news/speeches/keeping-our-financial-systems-secure-a-whole-of-society-response>.



remains committed to combating these types of crimes particularly in view of the importance of countering state-sponsored technology theft and eliminating risks to our supply chain.

The Justice Department will continue to aggressively investigate and prosecute individuals and corporations who undermine American competitiveness by stealing what they did not themselves create.

COMBATING ONLINE COPYRIGHT PIRACY THROUGH DOMESTIC AND INTERNATIONAL LAW ENFORCEMENT

The Justice Department and the Department of Homeland Security will continue to aggressively investigate and prosecute individuals and corporations that engage in large-scale online copyright piracy (through illicit streaming services and anti-circumvention devices), which not only violates the rights of copyright holders but also often involves the commission of other serious crimes such as money laundering and tax evasion.

In addition, the Justice Department, DHS, and other Federal agencies (as appropriate) will also continue to work with foreign law enforcement and other governmental offices to prosecute and otherwise prevent large-scale online copyright piracy, including the large-scale online pirates that are identified in USTR's annual List of Notorious Markets.

COMBATING THE TRAFFICKING OF COUNTERFEIT AND PIRATED GOODS THROUGH DOMESTIC AND INTERNATIONAL LAW ENFORCEMENT

The Justice Department and the Department of Homeland Security will continue to aggressively investigate and prosecute individuals and corporations that engage in the large-scale trafficking in counterfeit and pirated goods (including anti-circumvention devices), including counterfeit goods that are in the supply chains for the Department of Defense and other Federal agencies.

Moreover, the Defense Department, the General Services Administration, and other Federal agencies will also continue to strengthen the integrity of the USG supply chains through reforms to the Federal procurement process; collaboration with DOJ, DHS, and other Federal agencies; and collaboration with the private-sector contracting community and other stakeholders.

In addition, the Justice Department, DHS, and other Federal agencies (as appropriate) will also continue to work with foreign law enforcement and other governmental offices to prosecute and otherwise prevent large-scale production and trafficking of counterfeit and pirated goods, including the large-scale markets that are identified in USTR's annual Notorious Markets List.

In response to COVID-19, transnational criminal organizations have attempted to profit from the shipping of prohibited medical supplies, personal protective equipment, and other products which claim to help in the fight against coronavirus. The United States will continue to leverage resources from across the government to combat and prosecute fraud and criminal activity related to COVID-19 vaccines, therapeutics, personal protective equipment, and related items.



COMBATING THE TRAFFICKING OF COUNTERFEIT AND PIRATED GOODS THROUGH EXISTING DHS TRADE TOOLS AND MECHANISMS

The Department of Homeland Security (U.S. Customs and Border Protection (CBP)) will continue to modernize, update and expand the existing e-Recordation program, which provides right holders the opportunity to record their registered trademarks and copyrights to receive enhanced border enforcement of the IP. DHS will continue to provide education and outreach to the industry regarding the critical importance of obtaining trademark and copyright recordations in order to stem the flow of infringing goods into the United States. DHS will continue to educate personnel at all Ports of Entry on the importance of IP enforcement, and arm them with the necessary tools to detect and interdict infringing goods at the border.

COMBATING IP THEFT THROUGH THE U.S. TRANSNATIONAL AND HIGH TECH CRIME GLOBAL LAW ENFORCEMENT NETWORK (GLEN)

The State Department and the Justice Department will continue to support deployment of a U.S. Transnational and High Tech Crime Global Law Enforcement Network (GLEN) of regional International Computer Hacking and Intellectual Property Prosecutors (ICHIPs), experienced Justice Department prosecutors with responsibilities to strengthen U.S. law enforcement coordination and deliver capacity building assistance to key foreign law enforcement partners, Global Cyber Forensics Advisors, specialists to deliver digital forensics training, and long term federal agent mentors. The GLEN focuses on combatting the growing role of transnational crime organizations in IP theft of all kinds and on combating related cybercrime, such as Dark Web markets where criminals use cryptocurrencies to hide their illicit gains.

ENHANCED COLLABORATION WITH STATE AND LOCAL LAW ENFORCEMENT

Collaboration with state and local law enforcement is critical to addressing the production, sale, and distribution of counterfeit and pirated goods. Where applicable, federal agencies should work to enhance the capabilities and expertise of law enforcement at the state and local level by offering training opportunities for police agencies around the U.S. This would allow federal agents to refer more investigations to local officials, which in turn, can substantially improve the environment for legitimate businesses and right holders, while also reducing the burden on federal law enforcement and prosecutors.

In this regard, the Bureau of Justice Assistance manages the Intellectual Property Theft Enforcement Program (IPEP) in coordination with the Department of Justice's Computer Crime and Intellectual Property Section and Task Force on Intellectual Property. This program is designed to build the capacity of state and local criminal justice systems to address criminal IP enforcement through increased prosecution, prevention, training, and technical assistance availability. The IP Enforcement Program covers expenses related to performing criminal enforcement operations; educating the public and law enforcement professionals about IP crime to prevent, deter, and identify criminal violations of IP laws; establishing task forces to conduct



investigations, forensic analyses, and prosecutions; and acquiring equipment to conduct investigations and forensic analysis of evidence.





ENGAGEMENT AND PARTNERSHIP WITH THE PRIVATE SECTOR AND OTHER STAKEHOLDERS



“We will stand up to any country that unlawfully forces American companies to transfer their valuable technology as a condition of market access. We will combat the counterfeiting and piracy that destroys American jobs, we will enforce the rules of fair and reciprocal trade that form the foundation of responsible commerce...”

- President Donald J. Trump⁵⁰

The Trump Administration is working closely with a broad range of U.S. industry stakeholders, covering small, medium and large sized enterprises, to address the full scope of intellectual property policy, enforcement, and protection issues. Working together to find new solutions and creative ways to address intellectual property issues will be key.

That engagement has included training and capacity building programs conducted by Executive Branch agencies with the public. It has also included engagement by the Administration on hot button issues and policy priorities, to develop strategies for action on important areas of intellectual property policy.

The Administration has engaged with a variety of stakeholders in support of enhancing the protection and enforcement of intellectual property rights. These efforts involved departments and agencies across the Executive Branch, engaging with representatives of the private sector, trade associations, think tanks, academia, and other entities. These discussions also extended to foreign government officials, international governmental institutions (such as INTERPOL, Europol, and WIPO), and private-sector associations and groups in other countries.

In these engagements, the Administration has underscored the importance of domestic and foreign actors undertaking initiatives to promote and reinforce a robust IP environment that reduces counterfeiting, copyright piracy, trade secret theft, and patent infringement, and that provides government agencies, rights holders, and other stakeholders with effective legal tools for addressing these illicit activities. In this regard, the Administration emphasizes, *inter alia*, the importance of strengthening the “rule of law”; of enhancing collaboration (within and between governments, between the public and private sectors, and within the private sector) in combatting illicit activities that undermine the integrity of global supply chains, and thereby in supporting legitimate commerce and trade; and of governments considering the adoption of the “Whole of Government” approaches for strengthening the government’s effectiveness in IPR protection and enforcement.

⁵⁰ Remarks by the President on Signing a Memorandum on Addressing China’s Laws, Policies, Practices, and Actions Related to Intellectual Property, Innovation, and Technology (August 14, 2017) - <https://www.govinfo.gov/content/pkg/DCPD-201700571/pdf/DCPD-201700571.pdf>



Coordinating efforts across the government is critical to successfully tackling IP enforcement. The White House has convened a number of roundtables bringing together industry representatives, interested stakeholders, Members of Congress, Cabinet and other government officials to examine pressing IP issues impacting our economy to develop new initiatives, examine legislative priorities, and find real world solutions.

In April 2019, President Trump signed a Presidential Memorandum (PM) on combating trafficking in counterfeit and pirated goods, specifically in third party online marketplaces. The President stated that it is the policy of his Administration to protect American businesses, intellectual property rights holders, consumers, national and economic security, and the American public from the dangers and negative effects of counterfeit and pirated goods, including those that are imported through online third-party marketplaces and other third-party intermediaries.

The PM, for the first time, placed a spotlight on counterfeit and pirated hard goods being sold on e-commerce online marketplaces, and looks to address this growing problem. At the direction of the President, the Department of Homeland Security, with input from across the USG, released a report on January 24, 2020 analyzing online third-party marketplaces, examining the illicit goods being trafficked on them, and most importantly, identifying practical solutions, best practices, and potential legislative and administrative changes that will address this important problem. In conjunction with the release of the report, on January 31, 2020, the President issued Executive Order 13904 on “Ensuring Safe and Lawful E-Commerce for United States Consumers, Businesses, Government Supply Chains, and Intellectual Property Rights Holders.”

The intellectual property issues surrounding the online sale of goods and services are well-documented. Many stakeholders, including online sales platforms, payment processing companies and advertising networks, have formed collaborative partnerships to address these concerns, while encouraging innovation in the digital environment. Still, certain issues remain outstanding, and rapid advances in internet-enabled commerce – including entirely new business models – have brought new problems that need to be addressed. The Administration continues to seek the input of key stakeholders to help develop new partnerships and creative solutions for addressing outstanding IPR-related issues in the e-commerce and social media space, and will continue expanding its efforts in the future.

The Commerce Department’s IP Attaché program, established during the Bush Administration and operated by the USPTO, continues to promote U.S. economic interests and further U.S. government IP policy abroad. The IP Attaché program helps secure high standards in international agreements and host country laws and encourages effective IP protection by U.S.-trading partners for the benefit of U.S. stakeholders. IP Attachés engage regularly with the private sector and other stakeholders to understand their concerns and develop strategies to address them. Their work includes: raising issues with foreign government officials; providing training on IP law, enforcement, and administration; conducting public awareness programs; and presenting and explaining U.S. government positions. The Attachés also help U.S. stakeholders enter foreign markets and conduct business abroad. They inform U.S. stakeholders about foreign laws, policies and regulations and help them protect and enforce their IP abroad. IP Attachés



serve at U.S. missions throughout the world, including in China, Mexico, Brazil, Peru, Belgium, India, Thailand, Kuwait, Ukraine and Switzerland.

The State Department and the USPTO have also conducted in-person training programs and updated distance-learning IP training to prepare Foreign Service Officers embarking on overseas assignments on the fundamentals of intellectual property, U.S. government positions on current debates such as access-to-medicines, and U.S. industry priorities. As a result, these U.S. officials are better equipped to advocate for U.S. rights-holders overseas; provide useful field reporting to inform interagency discussions and deliberations regarding the Special 301 Annual Report to Congress, Notorious Markets, and other IP-related reports and policy discussions; and articulate U.S. government policy positions in bilateral discussions and in international fora.

The Administration also continues to examine opportunities to engage with stakeholders on important areas of IP policy, that includes existing industry-led voluntary initiatives to protect American intellectual property, and new areas for greater cooperation. IPEC will continue to hold White House IP roundtables going forward, to better engage with stakeholders, develop new initiatives, examine legislative priorities, and find creative solutions. As we look forward, we will build on past roundtables and look to examine new areas of importance to the U.S. economy, stakeholders, and policymakers.

The Administration will continue to engage with stakeholders on these and other important intellectual property issues to ensure that we are promoting and protecting American creativity and innovation.

The United States has taken unprecedented action through engagement and partnership with the private sector and other stakeholders to ensure adequate and effective protection of intellectual property. We remain committed to continuing our work in this area and, below, we outline our strategy going forward.

STRATEGY GOING FORWARD

COMBATING E-COMMERCE TRAFFICKING IN COUNTERFEIT AND PIRATED GOODS

The Trump Administration is committed to ending the flood of counterfeit and pirated goods (including anti-circumvention devices) that are coming into the US through e-commerce.

To that end, the Department of Homeland Security and other Federal agencies, as appropriate, will continue to implement the USG actions outlined in:

- Executive Order 13904 of January 31, 2020, on “Ensuring Safe and Lawful E-Commerce for United States Consumers, Businesses, Government Supply Chains, and Intellectual Property Rights Holders,” and



- the January 2020 DHS Report to the President on “Combating Trafficking in Counterfeit and Pirated Goods.”

In addition, DHS and other Federal agencies will continue to encourage and oversee the private sector’s implementation of the series of “best practices” that are outlined in the DHS Report.

Moreover, DHS and other Federal agencies (as appropriate) will continue to explore other avenues for combating the trafficking of counterfeit and pirated goods, including through expanded information sharing and collaboration with IP rights holders (including through the Donations Acceptance Program that improves CBP’s ability to identify infringing goods), e-commerce platforms and other intermediaries (e.g., air and sea shippers, and financial institutions), and other stakeholders. The Administration will also continue to work with state and local authorities to expand IP enforcement capacity across the U.S.

THE DHS REPORT OUTLINES THE FOLLOWING PRIVATE-SECTOR “BEST PRACTICES”:

1. COMPREHENSIVE “TERMS OF SERVICE” AGREEMENTS

It is critical that platforms require all third-party sellers to sign comprehensive and stringent terms of service agreements that maximize the authorities of the platforms to combat counterfeit trafficking. Terms of service agreements will provide platforms with an important legal means to combat counterfeit trafficking.

Most obviously, these terms of service should incorporate explicit prohibitions on selling counterfeit and pirated goods. Once the platform has affirmatively detected infringement on a seller profile, the actions listed below under the category of “post-discovery actions” should be allowed under the terms and taken swiftly.

The terms of service should also list the potential repercussions sellers face for violations. Generally, these repercussions should allow platforms to impose sanctions such as suspension, termination, and debarment without waiting for a determination by a court for sellers who violate the terms of the agreement. The terms should include escalating capabilities to suspend, terminate, and debar counterfeit traffickers and their affiliates.

Specifically, they should allow the platform to conduct, at a minimum, the following actions in response to violations or identified risk factors in the seller’s profile and product postings without waiting for a determination by a court:

- (1) terminate or suspend a seller account based on the use or reference to a username that is confusingly similar to a registered trademark;
- (2) take down or suspend and keep down individual product postings based on the misuse of photographs, logos, external links to infringing content, certain coded messages with actual intellectual property references removed, or imbedded offers to manufacture; and



(3) allow for an escalating enforcement structure that results in (for major infractions and/or repeat minor infractions) permanent removal of the seller, and any known related seller profiles, from the marketplace feature of the platform and further results in forfeiture and destruction of all offending goods in warehouses or fulfillment centers operated by, or under the control of, the platform.

To maximize platform authorities, and as explained further below, such terms of service should also allow platforms to impose appropriate limitations on products listed, require clearly identifiable country of origin disclosures, impose U.S. banking and indemnity requirements, and significantly improve pre-sale identification of third-party sellers.

2. SIGNIFICANTLY ENHANCED VETTING OF THIRD-PARTY SELLERS

Significantly enhanced vetting of third-party sellers is one of the most effective forms of due diligence platforms can engage in to reduce the risk of counterfeits entering the e-commerce stream. Platforms should have a uniform and articulable vetting regime to determine if a seller will be allowed to list products for sale.

To facilitate enhanced vetting, platforms should, at a minimum, require the following:

- (1) sufficient identification of the seller, its accounts and listings, and its business locations prior to allowing the seller to list products on the platform;
- (2) certification from the seller as to whether it, or related persons, have been banned or removed from any major e-commerce platforms, or otherwise implicated in selling counterfeit or pirated products online; and
- (3) acknowledgment, where applicable, that the seller is offering trademarked products for which the seller does not own the rights (either because they are a reseller or seller of used products).

Information provided by potential sellers should also be vetted for accuracy, including through the following efforts:

- (1) use of technological tools, as well as analyses of historical and public data, to assess risk of sellers and products; and
- (2) establishment of an audit program for sellers, concentrating on repeat offenders and those sellers exhibiting higher risk characteristics.

Any failure to provide accurate and responsive information should result in a determination to decline the seller account and/or to hold the seller in violation of the platform's terms of service.



3. LIMITATIONS ON HIGH RISK PRODUCTS

Platforms should have in place protocols and procedures to place limitations on the sale of products that have a higher risk of being counterfeited or pirated and/or pose a higher risk to the public health and safety. For example, some of the major platforms completely prohibit the sale of prescription medications by third-party sellers in their marketplaces. Many platforms also ban the sale of products that are known to be particularly vulnerable to counterfeiting and that pose a safety risk when sold online. Examples include car airbag components, infant formula, and new batteries for cellular phones.

Platforms can also place other types of restrictions on third-party sellers before certain high-risk categories of goods may be sold. For example, some platforms require prior approval for items such as automotive parts, jewelry, art, food, computers, sports collectibles, DVDs, and watches that are particularly prone to counterfeiting.

Platforms should prominently publish a list of items that may not be sold on third-party marketplaces under any circumstances (prohibited), as well as a list of items that can only be sold when accompanied by independent third-party certification (restricted). In constructing these lists, platforms should consider, among other things, whether a counterfeit version of the underlying product presents increased risks to the health and safety of U.S. residents or the national security of the United States. When a seller claims their merchandise has an independent third-party certification, and this certification is required in order for the product to be legally offered for sale in the United States, platforms should make good-faith efforts to verify the authenticity of these certifications.

4. EFFICIENT NOTICE AND TAKEDOWN PROCEDURES

Notice and takedown is the most common method of removing counterfeit listings from third-party marketplaces and e-commerce platforms. This noticing process can be particularly time-consuming and resource-intensive for rights holders who currently bear a highly disproportionate share of the burden of identifying the counterfeit listings for noticing.

These rights holders must invest significant resources to scour millions of listings across multiple platforms to identify potentially counterfeit listings and notify the third-party marketplace or e-commerce platform. This kind of comprehensive policing of e-commerce often is not possible for smaller enterprises.

As a further burden, some third-party marketplaces require rights holders to buy the suspected products from the sellers to verify that they are in fact counterfeit. There often is a delay of a day or longer between the time that notice is provided, and the time listing is removed. During this period, counterfeiters may continue to defraud American consumers.

To address these abuses — and assume a much greater share of responsibility for the policing of e-commerce — platforms should create and maintain clear, precise, and objective criteria that allow for quick and efficient notice and takedowns of infringing seller profiles and product listings. An effective regime should include, at a minimum, the following: (1) minimal



registration requirements for an interested party to participate in the notice and takedown process; (2) reasonable rules that treat profile owners offering large quantities of goods on consumer-to-consumer platforms as businesses; and (3) transparency to the rights holders as to how complaints are resolved along with relevant information on other sales activity by the seller that has been implicated.

5. ENHANCED POST-DISCOVERY ACTIONS

Upon discovery that counterfeit or pirated goods have been sold, platforms should conduct a series of “post-discovery” actions to remediate the fraud. These should include:

- (1) notification to any buyer(s) likely to have purchased the goods in question with the offer of a full refund;
- (2) notification to implicated rights holders, with details of the infringing goods, and information as to any remaining stock of the counterfeit and pirated goods held in warehouses;
- (3) implementation of practices that result in the removal of counterfeit and pirated goods within the platform’s effective control and in a manner that prevents such goods from re-entering the U.S. or being diverted to other markets; and
- (4) immediate engagement with law enforcement to provide intelligence and to determine further courses of action.

6. INDEMNIFICATION REQUIREMENTS FOR FOREIGN SELLERS

For a large portion of e-commerce, foreign sellers do not provide security or protection against a loss or other financial burden associated with the products they sell in the United States. Because these sellers are located outside the United States, they also may not be subject to the jurisdiction of U.S. courts in civil litigation or government enforcement actions. Further adding to this liability gap, there is this: while e-commerce platforms generally have a U.S. presence and are under U.S. jurisdiction, under the current interpretations of American laws and regulations, they are often found not to be liable for harm caused by the products they sell or distribute.

The result of this jurisdictional and liability gap is that consumers and rights holders do not have an efficient or predictable form of legal recourse when they are harmed by foreign products sold on third-party marketplaces. Accordingly, e-commerce platforms should require foreign sellers to provide some form of security in cases where a foreign product is sold to a U.S. consumer. Such form of security should be specifically designed to cover the potential types and scope of harm to consumers and rights holders from counterfeit or pirated products.

Note that there are several ways that platforms might flexibly achieve this goal. For example, requiring proof of insurance would provide a form of security for any reasonably foreseeable damages to consumers that might flow from the use of the product. Rights holders could also be compensated in cases of infringement.



7. CLEAR TRANSACTIONS THROUGH BANKS THAT COMPLY WITH U.S. ENFORCEMENT REQUESTS

Many foreign sellers on third-party marketplaces do not have a financial nexus to the United States, making it difficult to obtain financial information and to subject all parts of the transaction to U.S. law enforcement efforts.

Platforms should close this loophole by encouraging all sellers to clear transactions only with banks and payment providers that comply with U.S. law enforcement requests for information and laws related to (relevant to) the financing of counterfeit activity.

8. PRE-SALE IDENTIFICATION OF THIRD-PARTY SELLERS

Stakeholders have, at times, reported that buyers have been surprised to discover upon completion of an online sales transaction, that the order will be fulfilled by an unknown third-party seller and *not* the platform itself. Without addressing the separate legal question of whether this comprises deceptive action *per se*, at least some buyers may have made different purchasing decisions if they had known, prior to purchase, the identity of the third-party “storefront” owner, and/or the party ultimately responsible for fulfilling the transaction.

To increase transparency on this issue, platforms should significantly improve their pre-sale identification of third-party sellers so that buyers can make informed decisions, potentially factoring in the likelihood of being sold a counterfeit or IPR infringing merchandise. Platforms should implement additional measures to inform consumers, prior to the completion of a transaction, of the identity of storefront owners and/or those responsible for fulfilling a transaction, as well as any allegations of counterfeits being sold by a particular seller. On the converse, if a particular seller is a licensed reseller of the product, this information should also be provided.

Even if this information may be currently available, firm steps should be taken to ensure that this information is featured prominently in product listings. This will prompt greater consumer awareness and lead to more informed decision-making.

9. ESTABLISH MARKETPLACE SELLER IDS

Platforms generally do not require a seller on a third-party marketplace to identify the underlying business entity, nor to link one seller profile to other profiles owned by that same business, or by related businesses and owners. In addition, the party that appears as the seller on the invoice and the business or profile that appears on the platform to be the seller, may not always be the same. This lack of transparency allows one business to have many different profiles that can appear unrelated. It also allows a business to create and dissolve profiles with greater ease, which can obfuscate the main mechanism that consumers use to judge seller credibility, namely reviews by other buyers.

Platforms should require sellers to provide the names of their underlying business or businesses (if applicable), as well as any other related seller profiles owned or controlled by that seller or



that clear transactions through the same merchant account. Platforms can use this seller ID information in three helpful ways:

First, to communicate to the consumer a more holistic view of “who” is selling the goods, allowing the consumer to inspect, and consult reviews of, all related seller profiles to determine trustworthiness. Second, linking all related sellers together will assist rights holders in monitoring who is selling goods that they believe to be infringing. Third, the platform can use the connections to other seller profiles to better conduct its own internal risk assessment, and make risk mitigation decisions (e.g., requiring cash deposits or insurance) as appropriate based on the volume and sophistication of the seller.

10. CLEARLY IDENTIFIABLE COUNTRY OF ORIGIN DISCLOSURES

Brick-and-mortar retail stores are required to have labels on their products that clearly identify the country or countries of origin. No such requirement applies to online e-commerce.

Platforms should require sellers to disclose the country of origin of their products; and platforms should post this country of origin information for all the products they sell. This will assist both the platforms and consumers in evaluating the risks that a product might be counterfeit.

THE DHS REPORT OUTLINES THE FOLLOWING USG ACTIONS:

1. ENSURE ENTITIES WITH FINANCIAL INTERESTS IN IMPORTS BEAR RESPONSIBILITY

DHS will pursue a modernized enforcement and regulatory framework that reflects the economic realities of international e-commerce and ensures that the flow of contraband is stopped at its source.

- CBP will adjust its entry processes and requirements, as necessary, to ensure that all appropriate parties to import transactions are held responsible for exercising a duty of reasonable care.
- CBP will treat domestic warehouses and fulfillment centers as the ultimate consignee for any good that has not been sold to a specific consumer at the time of its importation. As discussed in this report, counterfeit products evade detection and sit in fulfillment centers waiting for purchase by a consumer. By treating domestic warehouses and fulfillment centers as consignees in such circumstances, CBP can enhance their ability to identify Section 321 abuses consistent with current authorities, as well as use its other statutory and regulatory authorities to combat trafficking of counterfeit or pirated goods in the possession of domestic warehouses and fulfillment centers.
- DHS will encourage platforms and other third-party intermediaries that own or operate warehouses or fulfillment centers to pursue, in coordination with rights holders, bulk abandonment and destruction of contraband goods that were not interdicted by CBP but are in the platform’s or other third-party intermediary’s possession in a warehouse or



fulfillment center. In cases where CBP suspects merchandise destined for a U.S. fulfillment center violates trade laws prohibiting importation of counterfeit and pirated goods and initiates a seizure process for merchandise, CBP will notify the platform or other third-party intermediary operating the fulfillment center or warehouse and request they pursue abandonment and destruction with the rights holders of any identical offending goods in their possession. Failure to cooperate following such notification could be a factor when CBP and ICE identify IPR cases to pursue under their existing authorities.

- CBP will require formal entry for shipments deemed high-risk, notwithstanding that such shipments might otherwise qualify for duty-free or informal entry treatment. High-risk shipments shall include those categories of goods that pose an elevated risk of counterfeiting and shall consider the source of the merchandise.
- CBP will address such high-risk shipments within its current bonding regime, developing a framework for a new type of bond specifically for counterfeit risk (like bonds required for anti-dumping and countervailing duties).
- In consultation with the Department of Justice, CBP will provide guidance regarding the types of customs violations that could be actionable under the False Claims Act (FCA) and will make information regarding successful FCA claims publicly available to inform and enable the public to identify and bring such violations to the attention of the government.

2. INCREASE SCRUTINY OF SECTION 321 ENVIRONMENT

As described in the DHS Report, existing laws and administrative practices may not sufficiently define responsibilities in the e-commerce environment, including who within an e-commerce transaction bears responsibility and legal liability for illicit merchandise and other violations. Statutes and administrative practices can be clarified and updated to provide greater transparency and information about the various parties involved so that DHS can identify high-risk transactions, interdict dangerous merchandise, and cause bad actors to pay the price for their actions. To address this problem in the Section 321 environment, CBP shall require data that sufficiently identifies the third-party seller and the nature and value of the imported merchandise, as well as other information that is necessary to determine the responsible party for Section 321 eligibility purposes, consistent with existing legal authorities. This will be informed by the following efforts:

- **Gather Information through Pilot Program.** CBP has been examining different e-commerce platform business models and has initiated several pilot programs designed to better understand the dynamics involved, and the type of information that the government should be collecting, including the “Section 321 Data Pilot” specifically for Section 321 entries, 84 Fed Reg. 35405 (July 23, 2019). CBP plans to continue these efforts for approximately two years and will use the information gained to better target counterfeits



and goods in the Section 321 environment, to help shape the scope of further policy formation, and ensure compliance with customs laws.

- **Enhanced Data Requirements.** Upon collection of adequate amounts of data through the Section 321 Data Pilot to identify gaps in the current data collection framework, but no later than six months from the issuance of this report, CBP will, consistent with applicable law, take all necessary steps — including, as applicable, issuing a notice of proposed rulemaking — to initiate a new data collection process. This process will include collecting certain information from domestic warehouses or fulfillment centers about third-party sellers in transactions for which the third-party seller utilizes a domestic warehouse or fulfillment center to store inventory for further sale to domestic consumers. The collection will also include data that sufficiently identifies the third-party seller and the nature and value of the imported merchandise, as well as other information that is necessary to determine the responsible party for Section 321 eligibility purposes, consistent with existing legal authorities. As appropriate, the domestic warehouse or fulfillment center may be deemed the “person” for Section 321 eligibility if the warehouse or fulfillment center fails to provide CBP with such information.
- **Issue Guidance.** To prevent abuse of Section 321, CBP will develop administrative guidance and, if necessary, consider whether promulgating new regulations is necessary to better define and subsequently enforce Section 321 eligibility requirements. At a minimum this guidance will address the following:
 - What value needs to be reported for a Section 321 entry; and
 - What information will be necessary to uniquely identify the ultimate consignee?

3. SUSPEND AND DEBAR REPEAT OFFENDERS; ACT AGAINST NON-COMPLIANT INTERNATIONAL POSTAL OPERATORS

In appropriate circumstances, CBP and ICE currently take steps to add persons (both entities and individuals) that have been found to lack present responsibility to the federal suspension and debarment list. Those persons on this suspension and debarment list are prohibited from participating in both government procurement and certain other non-procurement activities. However, current agency practices continue to permit these persons to obtain importer of record numbers and import goods into the United States.

Explicitly clarifying the scope of suspension and debarment to prevent participation in the importer of record program by amending Executive Order 12549 will assist CBP in requiring regulated entities to screen their customers against the suspension and debarment list. This will improve targeting and reduce the number of packages sent by repeat offenders, thereby stopping the flow of contraband at their sources.

- CBP recommends amending Executive Order 12549 to explicitly bar suspended and debarred persons from participating in the Importer of Record Program.



- Following such an amendment, or as otherwise consistent with applicable law and Executive Orders, CBP will require express consignment operators, carriers, and hub facilities to verify their customers have not been suspended or debarred from participating in the Importer of Record Program and refuse to provide import-related services to such suspended or debarred customers.
- Consistent with applicable law, CBP will condition continued access to its “trusted trader programs” by express consignment operators, carriers, and hub facilities on compliance with this verification process that determines whether a customer has been suspended or debarred.
- Consistent with applicable law, CBP also will identify non-compliant international postal operators and international posts by developing an International Mail Non-Compliance metric and will take enforcement actions based on these metrics.

4. APPLY CIVIL FINES, PENALTIES, AND INJUNCTIVE ACTIONS FOR INFRINGING IMPORTED PRODUCTS

It is critical to the integrity of e-commerce and for the protection of consumers and rights holders that e-commerce platforms that operate third-party marketplaces, and other third-party intermediaries assume greater responsibility, and therefore greater liability for their roles in the trafficking of counterfeit and pirated goods. To that end, CBP and ICE will use existing statutory and regulatory authorities to reach the activities of third-party marketplaces and other intermediaries where evidence demonstrates they have unlawfully assisted in the importation of counterfeit and pirated goods through the following actions:

- CBP and ICE will immediately begin to identify cases in which third-party intermediaries have demonstrably directed, assisted financially, or aided and abetted the importation of counterfeit merchandise. In coordination with the Department of Justice, CBP and ICE will seek all available statutory authorities to pursue civil fines and other penalties against these entities, including remedies under 19 U.S.C. § 1526(f), as appropriate.
- DHS recommends the administration pursue a statutory change to explicitly permit the government to seek injunctive relief against third-party marketplaces and other intermediaries dealing in counterfeit or pirated merchandise.
- In the interim, DHS will provide information and support to registered and recorded brand owners looking to utilize statutory authorities to seek injunctive relief against persons dealing in counterfeit merchandise, whether through direct sales or facilitation of sales, following seizures of goods that are imported contrary to law.
- ICE shall prioritize investigations into intellectual property-based crimes regardless of size and will make referrals for all such investigations where appropriate.



- ICE will coordinate with the Department of Justice to develop a strategy to investigate and prosecute intellectual property violations at all levels of the supply chain at a sufficiently high level to respond to the concerns raised in this report and according to its budget and broader mission goals.

5. LEVERAGE ADVANCE ELECTRONIC DATA FOR MAIL MODE

The United States Postal Service (USPS) is responsible for the presentation of mail and the provision of advance electronic data (AED) to CBP for arriving international mail parcels. USPS receives such AED from international posts. As has been noted, given the number of e-commerce transactions that are sent by mail, there is a significant gap in the information CBP receives. USPS and CBP have enhanced their collaboration in the targeting and identification of offending merchandise that is imported through international mail. Both agencies are implementing new strategies for leveraging the AED already available to identify offending merchandise by taking the following actions:

- DHS and USPS have signed a letter of intent that enables the USPS to work alongside CBP during special operations to become a force multiplier in the interdiction of counterfeit and pirated products.
- Upon completion and publication of the Synthetics Trafficking and Overdose Prevention (STOP) Act implementing regulations, DHS will use information gleaned from the 321 Data Pilot and will make recommendations to USPS to address any critical data gaps that remain between what is required of mail versus air cargo. At a minimum, this effort will seek to enhance the individualized tracking of international mail parcels sent through air cargo.

6. PLAN FOR ACTION

Counterfeit networks can be complex and multidimensional, exploiting legal and regulatory nuances in the different stages and aspects of international trade. Yet, for a variety of reasons, including competition law and trade secrets protection, various stakeholders in the e-commerce supply and distribution chains historically have not shared information on problematic sellers, shippers, freight forwarders, brokers, and other third-party intermediaries involved in the trafficking of counterfeit and pirated goods.

To address this issue, the IPR Center established the E-Commerce Working Group (ECWG) to foster and encourage the flow of actionable data and information between platforms and relevant third-party intermediaries as well as affected carriers, shippers, search engines, and payment processors. DHS supports the efforts of the IPR Center's ECWG and recommends the formation of the Anti-Counterfeiting Consortium to Identify Online Nefarious Actors (ACTION). Specific ACTION efforts will include the following:

- Sharing information within the ACTION framework on sellers, shippers, and other third-party intermediaries involved in trafficking in counterfeit and pirated goods.



- Sharing of risk automation techniques allowing ACTION members to create and improve on proactive targeting systems that automatically monitor online platform sellers for counterfeits and pirated goods.
- In addition, ACTION members may enter non-binding memoranda of understanding (MOU) with the IPR Center, consistent with U.S. law, to clarify the expectations and legal understanding for data sharing and coordinated IPR enforcement moving forward. Such MOUs will provide a vehicle to create a compliance scoring mechanism, as well as to delineate reasonable efforts to know the seller as well as the scope of products involved (e.g., fast-moving consumer goods, consumer electronics, fashion and luxury products, sports goods, software, and games, and toys).

7. ANALYZE ENFORCEMENT RESOURCES

Packages shipped through the international mail environment account for approximately 500 million packages annually. This does not include the millions of packages sent out daily via express consignment carriers. Amidst this flood of packages, insufficient resources can create a key limitation on the capabilities of DHS and other government agencies to screen, target, and detect the counterfeit and pirated goods that hide amongst the increasing massive flow of small packages.

A lack of resources also limits the ability of intelligence gathering and analysis, the proper determination of whether suspect goods may be counterfeit, the collection of comprehensive data on the trafficking in counterfeit and pirated goods, and the ability to conduct criminal investigations into the organizations that traffic in counterfeit goods. To address these issues, the following actions shall be taken:

- CBP will analyze whether the fees collected by CBP are currently set at sufficient levels to reimburse the costs associated with processing, inspecting, and collecting duties, taxes, and fees for parcels. CBP shall also provide recommendations to the Department of the Treasury regarding any fee adjustments that would be necessary to fund and reimburse the federal government's costs for more effectively combating the trafficking of counterfeit and pirated goods.

8. CREATE MODERNIZED E-COMMERCE ENFORCEMENT FRAMEWORK

DHS will pursue a modernized enforcement framework that reflects the economic realities of international e-commerce. This new framework may rely on the provision of privileges or benefits by CBP to e-commerce entities in exchange for the submission of additional data elements and sufficient internal controls that demonstrate the entities' ability to identify and manage risk within their respective supply chains. This new framework may also require updates to existing statutes and regulations to underpin this effort. Key elements of a modernized e-commerce enforcement framework could include, but are not limited to:



- Seeking statutory authority to treat IPR infringing goods as summarily forfeited upon discovery by CBP or ICE similar to the treatment of Schedule I and II narcotics under Title 21 of the U.S. Code. This will send a clear message about the importance of IPR enforcement, and simultaneously streamline the disposition of CBP enforcement actions.
- Pursuing statutory and/or regulatory changes, as necessary, so that CBP can better share information with the private sector;
- Implementing a risk-based bonding regime for e-commerce transactions; and
- Adopting streamlined enforcement processes for seized, abandoned, and forfeited goods.

9. ASSESS CONTRIBUTORY TRADEMARK INFRINGEMENT LIABILITY FOR E-COMMERCE

Online platforms have avoided civil liability for contributory trademark infringement in several cases. Given the advance and expansion of e-commerce, DHS recommends that the Department of Commerce consider the following measures:

- Assess the state of liability for trademark infringement considering recent judicial opinions, and the impact of this report—including platforms’ implementation of the best practices directed herein.
- Seek input from the private sector and other stakeholders as to the application of the traditional doctrines of trademark infringement to the e-commerce setting, including whether to pursue changes in the application of the contributory and/or vicarious infringement standards to platforms.

10. RE-EXAMINE THE LEGAL FRAMEWORK SURROUNDING NON-RESIDENT IMPORTERS

Currently, non-resident importers can legally enter goods into the United States provided they have a “resident agent” as defined in regulation. In practice, it can be difficult to compel non-resident importers to pay civil penalties and respond to other enforcement actions available to the USG. With this in mind, DHS should reevaluate the legal framework for allowing non-resident importers in the Section 321 *de minimis* low-value shipment environment.

11. ESTABLISH A NATIONAL CONSUMER AWARENESS CAMPAIGN

Given the critical role that consumers can play in the battle against online counterfeiting, DHS recommends the development of a national public-private awareness campaign. The national public awareness campaign recommended by DHS should involve platforms, rights holders, and the applicable government agencies to provide education for consumers regarding the risks of counterfeits as well as the various ways consumers can use to spot counterfeit products. At present, many consumers remain uninformed as to the risks of buying counterfeit and pirated products online. These risks are both direct to them (e.g., tainted baby food), as well as indirect (e.g., sales revenues can fund terrorism).



Many consumers are also unaware of the significant probabilities they face of being defrauded by counterfeiters when they shop on e-commerce platforms. As this report has documented, these probabilities are unacceptably high and appear to be rising. Even those consumers motivated to conduct research and stay informed might lack the specialized knowledge and efficient user tools to make diligent online buying decisions.

A strong and ongoing national campaign to increase public awareness about the risks of counterfeits in an e-commerce world should help alert consumers about the potential dangers of some online purchases. To the extent e-commerce platforms empower their consumers to participate in the monitoring and detection of counterfeits, e.g., by implementing several of the best practices recommended in this report, this will also help in the fight against the trafficking in counterfeit and pirated goods.

This effort could use technology as well as provide online education. For example, online marketplaces could prominently display messages on their home pages, as well as on high-risk item pages, warning customers about the dangers of counterfeits and urging respect for intellectual property rights. Additionally, the campaign could be paired with technologically-enabled assurances of authenticity. Such an approach would provide commercial advantages to the platforms that adopt it while also benefiting consumers and rights holders through reliable methods to identify and certify the authenticity of branded products across online platforms.

ENCOURAGE PRIVATE SECTOR TO TAKE PROMPT AND EFFECTIVE ACTION TO COMBAT THE SALE OF COUNTERFEIT AND PIRATED GOODS ONLINE

As has been emphasized in the President’s memorandum of April 3, 2019, the DHS Report of January 24, 2020, and Executive Order 13904 of January 31, 2020, the private sector has a substantial role in facilitating the trafficking in counterfeit and pirated goods. Moreover, such trafficking could be prevented to a substantial extent through committed action by a relatively small number of key e-commerce players. The U.S. government encourages e-commerce platforms to alter their business practices to align them not only with the “best practices” suggested by the DHS Report, but also with long-established supply-chain integrity practices. This action would not only substantially reduce the trafficking in such goods, but it would also enable CBP to direct more attention to the interdiction of other types of illicit goods, thereby having a multiplier effect on reducing the harms — to public health and safety, to the economy, and to national security — that result from the importation of illicit goods of all types.

COMBATING ONLINE COPYRIGHT PIRACY AND THROUGH “TRUSTED NOTIFIER” PROGRAMS

The United States will continue to support and encourage the broader and more regularized adoption of voluntary “Trusted Notifier” agreements involving Internet domain registries. These agreements have proven effective in removing websites that engage in large-scale copyright piracy, as has been demonstrated in the implementation of the agreements that the MPAA (now, the MPA) entered into in 2016 with the Radix and Donut registries. More recently, and in the context of another type of illicit trade, FDA and NTIA have entered into a “trusted notifier” pilot



program with registries for removing access to websites that sell or facilitate access to illegal opioids. Under the program, which launched on June 8, 2020, the FDA will serve as a “trusted notifier” to alert the registries about websites that are illegally selling unapproved opioids. Upon receiving notice from the FDA, a registry may then voluntarily lock the domain, delete the domain, or place the domain on hold, as appropriate. The “trusted notifier” designation expedites the process for suspending domain name registries. At the end of the pilot program, NTIA, FDA, and the domain name registries will analyze the program’s effectiveness and its potential as a long-term solution to combatting the illegal sale of unapproved opioids online.⁵¹

Going forward, the private sector can build on the successes that have already been achieved by expanding the number and scope of “Trusted Notifier” agreements that address large-scale copyright piracy with respect to films, music, books, and other copyrighted materials.

In addition, going forward, Federal agencies will support and encourage the adoption of voluntary “Trusted Notifier” agreements to combat so-called “online pharmacies” that sell counterfeit drugs. Voluntary collaborative efforts, including through the activities of the Center for Safe Internet Pharmacies and the Alliance for Safe Online Pharmacies, have made significant progress in protecting the American public from the online sale of counterfeit drugs. And, as just noted, FDA and NTIA have recently entered into a “trusted notifier” pilot program with domain registries for removing access to websites that sell or facilitate access to illegal opioids. Federal agencies will explore whether similar “trusted notifier” programs can be established that would remove access to websites that sell counterfeit drugs.

COMBATING ONLINE PIRACY THROUGH NEW TECHNOLOGIES

Depending on the circumstances, a copyright holder might be substantially protected through a “takedown” of an infringing stream that takes place within hours after the infringement “notice” has been submitted. However, in the case of some copyrighted material (e.g., a live sporting event), such a period of time may not be effective in preventing substantial economic harm to the copyright holder. In such situations, the takedown needs to take place much sooner (e.g., in a manner of minutes) in order to be effective in protecting the copyright holder. To ensure effective protection for copyright holders, internet platforms, and users it will be essential to examine and adopt new technologies, including content ID, artificial intelligence, and others, to improve the identification and removal of copyright infringing material quickly, accurately, and efficiently.

Additionally, progress has been made in the “demotion” of Internet search results for rogue websites that are engaged in illicit conduct, including large-scale IP infringement (counterfeiting and piracy) as well as the links to the infringing material itself. The United States expects that Internet search providers will continue to update and improve their “demotion” tools – and collaborate with IP rights holders – to make it harder for counterfeit goods and pirated material to proliferate.

⁵¹ Press Release: Commerce Department Announces NTIA Pilot Program with HHS, FDA to Fight Illegal Online Opioid Sales (June 8, 2020) - <https://www.commerce.gov/news/press-releases/2020/06/commerce-department-announces-ntia-pilot-program-hhs-fda-fight-illegal>



COMBATING ONLINE IP INFRINGEMENT BY DENYING ROGUE WEBSITES A FUNDING SOURCE (“FOLLOW THE MONEY”)

Progress has been made in preventing rogue websites from obtaining funding through legitimate funding sources. This progress has been achieved through voluntary initiatives in which the advertising community (the Trusted Accountability Group working with CreativeFuture) and the payment processors (such as the IACC’s RogueBlock® initiative, and the Center for Safe Internet Pharmacies) and have come together and established policies and mechanisms that deny advertising review and payment-processor services for these rogue websites. These initiatives have made it harder for these bad actors to generate revenue from these illicit activities, including by removing the “aura of legitimacy” that a website would have if it is able to rely on legitimate payment processors and well-known and trusted advertisers.

DEVELOPING A SUCCESSOR TO THE WHOIS DATABASE FOR OBTAINING DOMAIN-NAME REGISTRATION INFORMATION ABOUT ROGUE WEBSITES THAT ENGAGE IN COUNTERFEITING AND PIRACY

The United States will continue to engage with ICANN, through the multi-stakeholder process, to develop a successor to the WHOIS database that will allow for third parties with legitimate interests – such as law enforcement and IP rightsholders – to access non-public domain-name registration information that is critical to identifying the operators of rogue websites that are engaged in the trafficking of counterfeit and pirated goods and in the unauthorized streaming of copyrighted materials.

COMBATING SALE OF COUNTERFEIT PHARMACEUTICALS ONLINE

In addition to many of the efforts outlined above, the United States will continue to support efforts by organizations to educate consumers on the potential risks of purchasing pharmaceuticals online and on the ways to determine and verify if an online pharmacy is safe. The Administration also recommends that social media and other online platforms continue to work together to address the sale of counterfeit pharmaceuticals online.

COMBATING INACCURATE TRADEMARK APPLICATIONS

The USPTO will continue to address the problem of inaccurate trademark applications. USPTO has already implemented measures to prevent inaccurate trademark applications from being submitted in the first place and to prevent improper behavior by trademark applicants and registrants. The USPTO will continue to evaluate whether such measures are effective and will continue to work with trademark holders to implement any additional measures, as needed and appropriate. The Administration will also continue to work with Congress on the Trademark Modernization Act of 2020, which includes measures that will improve the integrity of the trademark registry.



CONTINUALLY IMPROVING THE USG'S CONSUMER-AWARENESS AND BUSINESS-EDUCATION ACTIVITIES

Federal agencies provide information to consumers in order to educate them about the value of intellectual property and the threats posed by counterfeit goods and pirated materials (both online streaming and hard goods, including anti-circumvention devices). Federal agencies provide this information domestically through online dissemination and public awareness campaigns. In addition, Federal agencies provide information to businesses, including SMEs (small-and-medium-size enterprises), to educate them about the importance of identifying and protecting their intellectual property and what steps they need to take in order to do so (e.g., with respect to trademarks, registering the marks with USPTO and then recording those registered marks with CBP). Federal agencies provide this information domestically through online dissemination as well as through in-person events that are held throughout the country (including the StopFakes Roadshows and the IP Road Shows).

It is important that these consumer-awareness and business-education materials remain up-to-date with respect to their informational content, and that Federal agencies communicate these materials to the public and businesses (including SMEs) in ways that will maximize their reach and impact. Accordingly, Federal agencies will continue to review and update their consumer-awareness and business-education activities with the objective of ensuring that they are well-designed to reach their target audiences and that they are effective in informing consumers about how they can protect themselves and others from the harms caused by counterfeit goods (e.g., defective goods can pose health and safety risks) and pirated materials (e.g., malware is often distributed through illicit online content) and in informing businesses about how they can identify and protect their intellectual property (patents, trademarks, copyrights, and trade secrets). As part of these reviews, agencies will actively seek to identify ways that technology (e.g., videoconferencing) and public-private partnerships (e.g., collaborating with trade associations) can be leveraged so as to expand the reach of these activities and maximize the usefulness of the information to their target audiences.

Finally, Federal agencies will continue to work with their foreign counterparts and with non-governmental entities to provide information to consumers and businesses in other countries that will educate them about the value of intellectual property, the threats posed by counterfeit goods and pirated materials, and how business can protect their various forms of intellectual property. Again, it is important that these consumer-awareness and business-education materials remain up-to-date with respect to their informational content, and that they are communicated in ways that will maximize their reach and impact.





LOOKING FORWARD



“America is the place to do business. So come to America, where you can innovate, create, and build. I believe in America. As President of the United States, I will always put America first, just like the leaders of other countries should put their country first also. But America first does not mean America alone. When the United States grows, so does the world. American prosperity has created countless jobs all around the globe, and the drive for excellence, creativity, and innovation in the U.S. has led to important discoveries that help people everywhere live more prosperous and far healthier lives.”

- President Donald J. Trump⁵²

Promoting strong intellectual property and innovation in the United States will be key to our nation’s continued economic competitiveness in the decades to come.

To grow our economy, drive innovation, protect American IP, and put America first will require not only effective coordination efforts within the United States government, but working together with Congress, the private sector, and the public. We must all work cooperatively to ensure that the United States’ overall intellectual property strategy takes into account both domestic and international policy and its effect. We should no longer view an action taken in one arena as separate from others. The work that the United States does to keep our intellectual property laws modernized and up to date domestically, and the way these laws are enforced, has an effect on international discussions and negotiations. And the actions that trading partners and competitors take overseas has a direct effect on the value of American IP, job creation and growth in the United States. The Office of the U.S. Intellectual Property Enforcement Coordinator (IPEC) works to promote innovation and creativity by ensuring effective intellectual property protection and enforcement, domestically and abroad.

We must work to address intellectual property issues, including protection and enforcement, at their source. We must also work with like-minded nations to ensure that foreign entities that engage in intellectual property theft are no longer able to profit from their ill-gotten gains.

President Trump and his Administration are making clear that America’s intellectual property policies must be coordinated effectively, and include an even broader range of Executive Branch agencies, and stakeholders.

⁵² Remarks by President Trump at the World Economic Forum (January 26, 2018)

– <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-world-economic-forum/>



As part of the Trump Administration’s approach we recognize that we must change the paradigm. Of course, we will continue to build upon the work of previous Administrations to continue programs and policies that are working well. And the Administration is working to ensure that the United States’ efforts are focused and well-coordinated and that resources are being used effectively and efficiently. But there are clearly approaches that have failed to bear fruit. And, in those areas that are not working, or achieving meaningful results, we must ask ourselves “what can we do differently?”

The road that we take will define the course of freedom, innovation, and prosperity – for decades to come. And that is why we must be committed to advancing pro-growth policies to protect our continued economic and innovative competitiveness, promote new engines of growth, and prioritize America’s innovative and creative capacity.





INTELLECTUAL PROPERTY: FACTS AND STATS



INTELLECTUAL PROPERTY AND THE ECONOMY:

- The Department of Commerce (2016) designated 81 industries (out of 313 total, more than 25 percent) as IP-intensive in 2014, collectively accounting for \$6.6 trillion value added in 2014, or 38.2 percent of U.S. GDP. IP-intensive industries directly accounted for 27.9 million jobs and indirectly supported an additional 17.6 million jobs, representing almost one in three jobs in the United States. IP-intensive industries also pay well; compared to non-IP intensive industries, workers in IP-intensive industries earn 46 percent higher weekly wages.⁵³
- The Department of Commerce reported that technological innovation is linked to roughly three-quarters of U.S. growth since the mid-1940s.⁵⁴
- Trademark-intensive industries accounted for 23.7 million jobs in 2014; copyright-intensive industries accounted for 5.6 million jobs in 2014; and patent-intensive industries accounted for 3.9 million jobs.⁵⁵
- In 2014, workers in IP industries received an average weekly wage of \$1,312, compared to a weekly average of \$896 in non-IP-intensive industries; a 46 percent difference.⁵⁶
- Share of workers in IP industries with a bachelor's degree or higher fell from 42.4 percent in 2010 to 39.8 percent in 2015, while the share of workers with a bachelor's degree or higher in non-IP industries increased from 34.2 percent in 2010 to 38.9 percent in 2015.⁵⁷
- Merchandise exports of IP industries grew to \$842 billion in 2014, up from \$775 billion in 2010; an 8.6 percent increase.⁵⁸
- Exports of service-providing IP industries totaled nearly \$81 billion in 2012, which accounted for about 12.3 percent of total U.S. private services exported that year.⁵⁹
- Investment in intellectual property products now accounts for about one-third of U.S. private nonresidential fixed investment, and as such, trade agreements that enhance international protection of intellectual property—such as the United States–Mexico Canada Agreement and Phase One Agreement—could also elevate the level of innovation and productivity growth.⁶⁰

⁵³ U.S. Patent and Trademark Office and Economics and Statistics Administration (2016). *Intellectual Property and the U.S. Economy*. pp.1-28. <https://www.uspto.gov/sites/default/files/documents/IPandtheUSEconomySept2016.pdf>

⁵⁴ Rai, Arti, Stuart Graham, and Mark Doms. 2010. Patent Reform: Unleashing Innovation, Promoting Economic Growth, and Producing High-Paying Jobs. White Paper. Department of Commerce. https://2010-2014.commerce.gov/sites/default/files/documents/migrated/Patent_Reform-paper.pdf

⁵⁵ U.S. Patent and Trademark Office and Economics and Statistics Administration (2016). *Intellectual Property and the U.S. Economy*, pp.1-28. <https://www.uspto.gov/sites/default/files/documents/IPandtheUSEconomySept2016.pdf>

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Economic Report of the President together with the Annual Report of the Council of Economic Advisors (2020), p. 302. <https://www.whitehouse.gov/wp-content/uploads/2020/02/2020-Economic-Report-of-the-President-WHCEA.pdf>



THE ECONOMIC COSTS OF IP THEFT:

- A report by the OECD and EUIPO estimates that trade in counterfeit and pirated goods stands at 3.3 percent of global trade.⁶¹
- The countries most affected by counterfeiting in 2016 were the United States, whose brands or patents were concerned by 24% of the fake products seized, followed by France at 17%, Italy (15%), Switzerland (11%) and Germany (9%).⁶²
- The IP Commission estimates that counterfeit goods, pirated software, and theft of trade secrets, which includes cyber-enabled trade secrets, directly cost the U.S. economy \$225 to \$600 billion annually, or 1 to 3 percent of GDP in 2016.⁶³
- The estimated low-end cost of trade secret theft to U.S. firms is \$180 billion, or 1% of U.S. GDP. The high-end estimate is \$540 billion, amounting to 3% of GDP.⁶⁴
- CBP reported seizing over \$1.5 billion of counterfeit goods in FY 2019 (valued using the total manufacturer's suggested retail price),⁶⁵ but the IP commission estimates that CBP seized only about 1.2-2.3 percent of the projected total value of counterfeit goods entering the United States (in 2015). The IP commission attributes this low share of seized goods to the fact that counterfeit goods mostly travel by postal service and often in small shipments of ten items or fewer. Given that the MSRP value of seized counterfeit goods from China and Hong Kong was valued at about \$1.4 billion in FY 2019,⁶⁶ that implies that the total value of counterfeit goods arriving from China and Hong Kong, based on the manufacturer suggested retail price of the infringed good, is estimated at approximately \$60.8-\$116 billion in 2019, 0.28-0.54 percent of 2019 GDP.
- In 2019, CBP reports that \$1.03 billion (66 percent) of seized goods originated in China and \$397.3 million (26 percent) originated in Hong Kong.⁶⁷
- Between 2013 and 2017, total inbound international package mail to the U.S. tripled.⁶⁸ There was a sharp rise in seized goods after the United States Postal Service (USPS) entered into deals with postal services in China (in 2010), Hong Kong (2011), Singapore (2012), and Korea (2013) to provide—for a small premium—tracking and delivery confirmation, an essential feature for e-commerce transactions at popular online retailers. The service, called “ePacket” led to large increases in the number of packages shipped to the U.S. from Asia;

⁶¹ OECD-EUIPO. 2019. “Trends in Trade in Counterfeit and Pirated Goods.” <https://www.oecd.org/newsroom/trade-in-fake-goods-is-now-33-of-world-trade-and-rising.htm>; <https://euipo.europa.eu/ohimportal/en/news/-/action/view/5031024>

⁶² Ibid.

⁶³ IP Commission. 2017. “Update to the Report of the Commission on the Theft of American Intellectual Property.”

⁶⁴ IP Commission. 2017. “Update to the Report of the Commission on the Theft of American Intellectual Property.” http://www.ipcommission.org/report/IP_Commission_Report_Update_2017.pdf

⁶⁵ U.S. Customs and Border Protection Office of Trade (2019). *Intellectual Property Rights Seizure Statistics Fiscal Year 2019* [online] Washington: U.S. Department of Homeland Security, p. 4. Available at: <https://www.cbp.gov/document/report/fy-2019-ipr-seizure-statistics>

⁶⁶ Ibid. at 23.

⁶⁷ Ibid.

⁶⁸ United States Senate Permanent Subcommittee on Investigations (2018). *Combating the Opioid Crisis: Exploiting Vulnerabilities in International Mail*. Washington: United States Senate Committee on Homeland Security and Governmental Affairs, p.21. (http://www.hsgac.senate.gov/download/psi-report_-combating-the-opioid-crisis)



between fiscal years 2011 and 2012, the number from China alone nearly tripled, from 9.5 million to 26.8 million.⁶⁹



⁶⁹ Guo, Jeff (September 12, 2014). The Postal Service is losing millions a year to help you buy cheap stuff from China. Washington Post. https://www.washingtonpost.com/news/storyline/wp/2014/09/12/the-postal-service-is-losing-millions-a-year-to-help-you-buy-cheap-stuff-from-china/?utm_term=.77dc1ca94bc3.

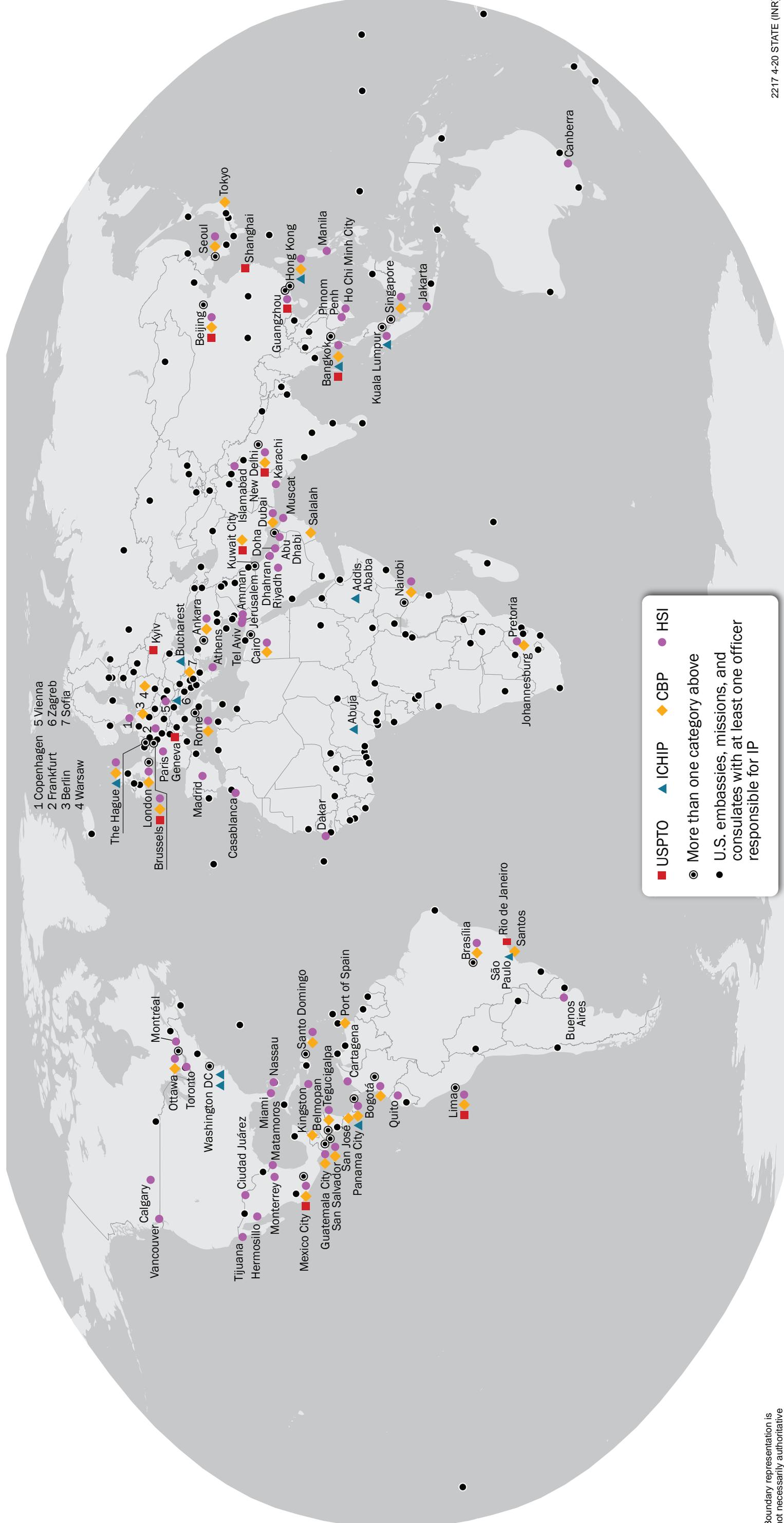
Office of Inspector General, U.S. Postal Service (February 25, 2014): Inbound China ePacket Costing Methodology Audit Report - <https://www.uspsoidg.gov/sites/default/files/document-library-files/2015/ms-ar-14-002.pdf>



INTELLECTUAL PROPERTY: MAP



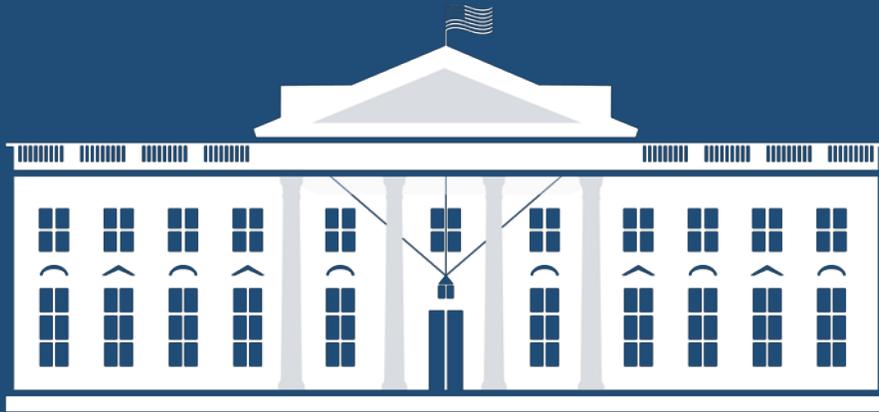
Global IP Attachés, ICHIPS, HSI, and CBP Officers



- 1 Copenhagen
- 2 Frankfurt
- 3 Berlin
- 4 Warsaw
- 5 Vienna
- 6 Zagreb
- 7 Sofia

- USPTO
- ▲ ICHIP
- ◆ CBP
- HSI
- More than one category above
- U.S. embassies, missions, and consulates with at least one officer responsible for IP

Boundary representation is not necessarily authoritative



THE WHITE HOUSE

UNITED STATES
INTELLECTUAL PROPERTY ENFORCEMENT COORDINATOR

CONTACT@IPEC.EOP.GOV