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Intellectual Property Spotlight



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Introduction

On June 22, 2010, the Obama Administration released the first Joint Strategic Plan on Intellectual Property Enforcement. The strategy was announced by Vice President Biden, with myself, Attorney General Holder, Secretary Napolitano, Secretary Locke, and Ambassador Kirk. The release was also attended by Alan Bersin (Commissioner of U.S. Customs and Border Protection), Margaret Hamburg (Commissioner of the Food and Drug Administration), Robert Hormats (Undersecretary for Economic, Energy, and Agriculture Affairs, U.S. Department of State), and John Morton (Director of U.S. Immigration and Customs Enforcement). On June 23, 2010, the Senate Judiciary Committee held an oversight hearing on the Office of the U.S. Intellectual Property Enforcement Coordinator and the Joint Strategic Plan.

The Obama Administration has committed to act to strengthen enforcement. We will lead by example and ensure that the U.S. Government respects intellectual property rights in our policies and our actions. We will be transparent in our development of enforcement policy, information sharing, and reporting of law enforcement activities at home and abroad. We will improve the coordination (and thereby the effectiveness) of law enforcement efforts at the Federal, state and local level, of personnel stationed overseas and of our international training efforts. We will enforce American intellectual property rights abroad by working with our trading partners and with international organizations. We will secure our supply chain. We will use information and data to make policy decisions and focus our activities.

As mentioned above, one of our priorities is transparency and information sharing. To that end, we want to highlight the significant work that the U.S. Government is doing to combat infringement. As this U.S. Intellectual Property Enforcement Coordinator (IPEC) Intellectual Property Spotlight should demonstrate, we—the U.S. Government—are committed to aggressively protecting American intellectual property rights.

I look forward to continuing to work with Federal agencies, Congress, and the public as we find new and creative ways to implement the Joint Strategic Plan. And I look forward to continuing to share what we are doing in the IPEC Intellectual Property Spotlight.

Victoria A. Espinel
U.S. Intellectual Property Enforcement Coordinator



"[W]e're going to aggressively protect our intellectual property. Our single greatest asset is the innovation and the ingenuity and creativity of the American people. It is essential to our prosperity and it will only become more so in this century."

—President Barack Obama (March 11, 2010)

Securing Our Supply Chain

Online Piracy

ICE Announced "Operation In Our Sites," a New Initiative Targeting Pirate and Infringing Websites: U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) and the National Intellectual Property Rights Coordination Center (IPR Center) recently announced Operation in Our Sites, a large-scale initiative targeting all forms of Internet piracy and counterfeiting.

As part of that Operation, on June 30, 2010, the U.S. Attorney's Office for the Southern District of New York obtained seizure warrants for the domain names of multiple popular web sites, all of which were allegedly involved in the illegal distribution of first run and other copyright-protected movies and television shows over the Internet. These websites were allegedly illegally making available movies such as "The Karate Kid," "Prince of Persia," and "Sex and The City 2," among other popular copyrighted movies that were then in theaters. The government will ask for the forfeiture of the domain names.

Millions of post-seizure visitors to the sites saw the following banner notifying them that the sites had been seized:



Banner Appearing on Seized Websites

Quotes about the Prosecution



"Criminal copyright infringement occurs on a massive scale over the Internet," said **Preet Bharara, U.S. Attorney for the Southern District of New York.** "That translates into lost jobs and real hardships for ordinary working people. That's why we took today's action. If your business model is movie piracy, your story will not have a happy ending."

"We commend the action of ICE and the IPR Center in striking a significant blow against those who seek to profit from the copyrighted, intellectual property of others," said **Matthew D. Loeb, President of the International Alliance of Theatrical Stage Employees.** "The stealing of digital content is not a victimless crime; it's also the theft of tens of thousands of American jobs."

"We are facing a dramatic rise in the number of foreign and domestic Web sites that are in the business of making films and television shows—created by our members—available for illegal download or streaming," said **Kathy Garmezy, Associate Executive Director, Government & International Affairs, Directors Guild of America.** "If left unchecked, this illegal activity threatens the very ability of filmmakers to both earn a living and create the content that is enjoyed by billions around the world."

"U.S. business is under assault from those who pirate copyrighted material and produce counterfeit trademarked goods," said **ICE Director John Morton.** "Operation In Our Sites is a first-of-its-kind aggressive and strategic offensive that methodically targets counterfeiters on the Internet and those who pirate any copyrighted material."

At Our Borders

June and July saw two of the biggest cases involving counterfeit goods in U.S. history.

$100 Million in Counterfeit Goods from China: On June 10, 2010, two defendants were convicted of smuggling more than 300,000 fake luxury handbags and wallets from China bearing counterfeit trademarks of Coach, Burberry, Louis Vuitton, Gucci, Fendi, and Chanel. The defendants controlled 13 companies and operated eight factories in China and the counterfeit goods had an estimated value of more than $100 million. The defendants face a maximum of 30 years in prison and $4.75 million in fines. The case was investigated by ICE HSI and prosecuted by the U.S. Attorney's Office for the Eastern District of Virginia and the U.S. Department of Justice (DOJ's) Computer Crimes and Intellectual Property Section (CCIPS).

$100 Million in Counterfeit Goods from China; 11 arrests and 230,000 seized items: A crackdown on shops at Fisherman's Wharf in San Francisco generated $100 million in counterfeit seizures and resulted in 11 people indicted and 230,000 counterfeit items seized. On July 22, 2010, a federal grand jury charged eight shop owners with importing and selling fake designer apparel and accessories bearing the counterfeit trademarks of more than 70 companies, including Coach, Oakley, Nike, and Kate Spade. The investigation lasted over two years and began when U.S. Customs and Border Protection (CBP) intercepted a container from China at the Port of Oakland that contained 50,000 allegedly counterfeit designer accessories worth more than $22 million. In total, the investigation has led to the seizure of approximately $100 million worth of allegedly counterfeit merchandise imported from China. The defendants face a maximum of 20 years in prison for each smuggling count, 10 years in prison for each count of trafficking in counterfeit goods, and five years in prison for conspiracy. The case was investigated by ICE HSI and is being prosecuted by the U.S. Attorney's Office for the Northern District of California. The **U.S. Attorney for the Northern District of California, Melinda Haag,** said: "My office takes Intellectual Property theft seriously and will do everything in its power to bring to justice individuals who commit these crimes."

Port of Los Angeles/Long Beach Operation to Stop Counterfeit Exercise-Related Products: The Los Angeles Field Office for CBP has been conducting Operation Treadmill, targeting counterfeit exercise equipment entering the country through the sea port in Long Beach/Los Angeles, California (the nation's largest sea port). The Operation thus far has resulted in 25 seizures worth about $1.3 million. In connection with that Operation, on July 15, 2010, the U.S. Attorney's Office for the Central District of California obtained a conviction of a defendant for trafficking in counterfeit exercise equipment and for bribery. The defendant imported counterfeit exercise equipment (including that of Nautilus, Inc.) from China and attempted to bribe an ICE Special Agent, posing as a CBP Officer, to release the exercise equipment after it was seized. The defendant faces a maximum 90-year prison term and fines up to $12.5 million. The **U.S. Attorney for the Central District of California, André Birotte, Jr.**, emphasized that "[i]ntellectual property violators pose a threat to the jobs of American citizens, and those who try to smuggle their counterfeit goods through our ports will be prosecuted to the full extent of the law." **Special Agent in Charge of ICE HSI's Los Angeles Office, Claude Arnold**, echoed that point, stating: "This verdict should serve as a warning to those engaged in product counterfeiting and other types of commercial piracy." He further added that "[i]ntellectual property crimes like these not only result in the loss of untold U.S. jobs and revenues, but the importation of substandard or tainted products also poses a serious threat to consumers' health and safety." **CBP Acting Director of Field Operations for Long Beach/Los Angeles, Carlos Martel**, highlighted the collaborative work involved in Operation Treadmill: "Great teamwork made this operation a success. Operation Treadmill is a fine example of CBP leveraging internal and external partnerships to combat intellectual property rights violations." **Bill McMahon, a Senior Vice President at Nautilus, Inc.**, also emphasized that: "Nautilus is extremely grateful for the diligent and effective efforts of CBP and ICE personnel at the Long Beach/Los Angeles ports. Without their consistent efforts Nautilus would not have been able to stop the importation of these counterfeit and sub-standard products into the country. These efforts not only are an important part of supporting our intellectual property rights, but also in protecting the jobs of our employees whose positions depend on selling legitimate Nautilus products."

Quotes about the Prosecution

June 2010 Conviction for Counterfeit Luxury Handbags and Wallets

"The defendants convicted . . . led a massive counterfeit goods operation that stretched from China to New York," said **Assistant Attorney General Lanny A. Breuer.** "The Department of Justice will continue aggressively to prosecute intellectual property crimes and to protect business and consumers alike from those looking to cheat their way to a quick profit."

"This case is about economic identity theft and blatant disregard of the law," said **Neil H. MacBride, U.S. Attorney for the Eastern District of Virginia.** "These convictions reinforce the integrity of our nation's intellectual property laws that the Eastern District of Virginia is committed to enforcing."

"This landmark conviction represents the latest success of ICE in targeting intellectual property thieves," said **ICE Director Morton.** "Through the National Intellectual Property Rights Coordination Center, ICE will continue working to stem the flow of counterfeit goods into the commerce of the United States."

"Investigations and prosecutions by our federal law enforcement agencies are essential in protecting not only the intellectual property of brands, such as Coach, but in safeguarding America," said **Todd Kahn, General Counsel, Coach, Inc.** "Coach is well aware of the serious economic, health and safety risks that counterfeit goods pose to the American public. We are deeply grateful to the law enforcement agencies that pursue and stop counterfeiters."

Preventing American Innovation from Being Stolen and Used Overseas

Transfer of American Hybrid Vehicle Technology to a Chinese Company: On July 22, 2010, a former General Motors (GM) employee and her husband were arrested for trade secret violations and wire fraud. The indictment accused the defendants of taking GM trade secrets relating to hybrid-vehicle technology and using the information both to benefit their own company, and to provide the information to Chery Automobile, a Chinese automotive manufacturer and a competitor of GM. GM estimated the value of the trade secrets to be more than $40 million. The case was investigated by the Federal Bureau of Investigation (FBI) and is being prosecuted by the U.S. Attorney's Office for the Eastern District of Michigan. The **U.S. Attorney for the Eastern District of Michigan, Barbara L. McQuade**, said: "As our auto industry works to find new areas of innovation, such as hybrid technology, we will not tolerate the theft of our trade secrets from foreign competitors." She went on to emphasize: "We will aggressively prosecute people who steal from the investment that our auto industry has made in research and development."

Attempt to Transfer American Television Technology to China: On June 8, 2010, a former research chemist for DuPont pleaded guilty to trade secret theft. The defendant worked on Organic Light Emitting Diodes at DuPont. In 2009, when still working for DuPont, the defendant accepted a position at Peking University College of Engineering, Department of Nanotechnology, in China and then attempted to send documents detailing a proprietary chemical process and samples of chemical compounds to himself at the University. The case was investigated by the FBI and prosecuted by the U.S. Attorney's Office for the District of Delaware. The **U.S. Attorney for the District of Delaware, David C. Weiss**, stated: "We will continue to vigilantly enforce intellectual property offenses, particularly when such offenses involve the possible transmittal of sensitive trade secret information outside of the United States." The defendant faces a maximum prison term of 10 years and a fine of up to $250,000.

Quotes about the Prosecution

Trade Secret Cases

"Our attention to intellectual property law enforcement is central to protecting our nation's ability to remain at the forefront of technological advancement, business development, and job creation," said **Acting Deputy Attorney General Gary Grindler, Chair of the DOJ Task Force on Intellectual Property.** "Through enforcement actions such as these, and by working closely with federal, state and local partners to pursue an array of other IP crimes, the Justice Department will continue to protect our nation's economic vitality and public welfare."

"We remain committed to investigating and prosecuting individuals who exploit U.S. technologies for their own gain," said **Special Agent in Charge of the FBI for Delaware, Richard A. McFeely.**

Business Research and Development Survey indicates that, in 2008, U.S. R&D companies employed 27 million workers worldwide. 77% of the employees doing R&D work were employed in the U.S.

Building A Data-Driven Government

- The U.S. Department of Commerce Bureau of Economic Analysis Survey shows that royalty and licensing fees paid to America's innovators from overseas is on pace to reach $100 billion in 2010. Royalty and licensing fees paid to Americans doubled from 2003-2008 (from $48 billion to $93 billion).
- Exports in other intellectual property-intensive industries nearly doubled from 2003-2008. Income from exports of IT-related services, such as research and development and computer and database services, rose from $17.7 billion to just under $30 billion. Exports of medicines and pharmaceuticals rose from just over $20 billion to just over $40 billion.
- Business Research and Development Survey, developed by the National Science Foundation and the U.S. Census Bureau, reported that, in 2008, U.S. research and development companies employed 27 million total workers worldwide. The majority of employees doing research and development work (77%) were located in the U.S. National Science Foundation (July 8, 2010).

BEA
BUREAU OF ECONOMIC ANALYSIS
U.S. DEPARTMENT OF COMMERCE

Global Competitiveness:

- American innovators on pace to receive more than $100 billion in royalty and licensing fees in 2010 from overseas.
- From 2003-2008, exports of IT-related services and medicines and pharmaceuticals nearly doubled.

Transparency

Release of Joint Strategic Plan on Intellectual Property Enforcement

On June 22, 2010, the Obama Administration released the first Joint Strategic Plan on Intellectual Property Enforcement. The strategy was released at an event with Vice President Biden, IPEC Espinel, Attorney General Holder, Secretary Napolitano, Secretary Locke, Ambassador Kirk, CBP Commissioner Bersin, FDA Commissioner Hamburg, Undersecretary of State Hormats, and ICE Director Morton.

After announcing the release of the Joint Strategic Plan and after comments by the Vice President and IPEC Espinel, the Vice President met with the members of the cabinet and other attendees to discuss implementation of the Joint Strategic Plan.



Official White House Photo by David Lienemann

Congressional Testimony

- Senate Judiciary Committee Hearing about the Office of the IPEC and the Joint Strategic Plan: On June 23, 2010, IPEC Espinel testified before the Senate Judiciary Committee about the Joint Strategic Plan on Intellectual Property Enforcement, which the IPEC had released the previous day.
- House Foreign Affairs Committee Hearing about "Protecting U.S. Intellectual Property Overseas: The Joint Strategic Plan and Beyond:" On July 21, 2010, IPEC Espinel and ICE Director Morton testified about ways to protect U.S. intellectual property rights from international infringement.

Public Awareness

Counterfeit Pharmaceuticals

- **Counterfeit Drug Public Awareness Campaign and Public Service Ads (Tanzania):** In June and July 2010, the U.S. Embassy organized a high-profile awareness campaign on counterfeit medicines in partnership with the Tanzanian Fair Competition Commission at Tanzania's largest annual trade show, which included a related public service ad campaign.
- **Counterfeit Drug Public Awareness Program (Sudan):** On June 6, 2010, the U.S. Embassy hosted this program, attended by over 35 leading Sudanese doctors, pharmacists, pharmaceutical company officials, hospital authorities, university faculty members, international non-governmental organizations, law enforcement officials, and members of Sudan's Ministry of Health, as well as Sudanese radio and print journalists.

Organized Crime and Terrorism

- **IP Theft and International Organized Crime and Terrorism Symposium (U.S.):** On June 3, 2010, the IPR Center held the symposium, with presentations made by INTERPOL, ICE HSI, DOJ, Michigan State University, the RAND Corporation, the National Cyber Forensics and Training Alliance, the New York Police Department, and the City of London Police.

Internet Piracy

- **Meeting on Copyright Policy, Creativity, and Innovation in our Internet Economy (U.S.):** On July 1, 2010, the U.S. Patent and Trademark Office (USPTO) and the National Telecommunications and Information Administration held an all-day public meeting on copyright law in our internet economy, with speakers from the U.S. Government (including the IPEC) and private industry.

Industry Outreach

- **DOJ's 4th Annual IP Industry and Law Enforcement Conference (U.S.):** On June 16, 2010, DOJ held its fourth annual intellectual property conference, bringing together a broad range of intellectual property industries (pharmaceuticals, software, luxury goods, electronics, apparel, motion pictures, music, certification mark, consumer goods, and automobiles) to communicate with law enforcement agents and prosecutors responsible for intellectual property enforcement. Attorney General Holder, Assistant Attorney General (Criminal Division) Breuer, ICE Director Morton, FBI Deputy Assistant Director Jeff Troy, CBP Assistant Commissioner Daniel Baldwin, among others, spoke and more than 90 industry representatives participated.
- **Cyber and IP Crime Symposium (U.S.):** On June 8, 2010, the U.S. Attorney's Office for the District of New Jersey held a cyber and intellectual property crime symposium with Rutgers Law School. The symposium highlighted the importance of cooperation between law enforcement and private industry in fighting the theft of trade secrets and counterfeit trademarks and attracted over 180 attendees from private industry.

Ensuring Efficiency And Coordination

Coordination of Federal, State and Local Law Enforcement



LAPD arrests for IP offenses up nearly 200% so far this year.

- **LAPD Increases IP Arrests by Nearly 200%:** By June 2010, the efforts of the Los Angeles Police Department (LAPD's) Piracy Unit had resulted in 70 intellectual property crime-related arrests, which is a 192% percent increase over last year's total of 24 arrests year to date (YTD). DOJ, through Bureau of Justice Assistance (BJA), provided grants to the LAPD, which aided the Piracy Unit's efforts.
- **Virginia Cracks Down on the Sale of Counterfeit Goods:** In June 2010, Virginia's Intellectual Property Task Force executed 77 search warrants, made 15 arrests and seized 18,298 counterfeit items, worth more than $2.5 million at a local flea market. The intelligence from the investigation had a nexus with federal cases involving overseas and out-of-state crime groups. DOJ, through BJA, provided grants to the Task Force, which aided the Task Force's efforts.
- **North Carolina Increases Its Use of Technology to Fight Infringement:** In June 2010, North Carolina's Intellectual Property Task Force launched an initiative to provide new technology to local law enforcement. Task Force members across the state are now able to download the contents of suspects' cell phones in the field. This seized data (which might include contact lists, calls made and received, text messages, and pictures) are then fed into a database and analyzed in order to detect criminal enterprises and networks. Since June 1, 2010, this technology initiative has led to the seizure and analysis of 18 handheld communication devices and over $1.1 million worth of counterfeit goods from 49 suspects. The funding for this new initiative was made possible by a grant from the DOJ/BJA.
- **ICE Special Agents in Houston and Houston's Police Department Work Together to Target the Sale of Counterfeit Goods:** In April 2010, ICE established 22 Intellectual Property Theft Enforcement Teams (IPTETs) to help coordinate the efforts of federal, state, and local law enforcement. On July 22, 2010, an IPTET in Houston, Texas, comprised of ICE HSI agents and the Houston Police Department, conducted undercover operations at a boutique in Spring, Texas, resulting in the arrest of the owner on state charges. A total of 1,148 units of fake goods bearing counterfeit trademarks such as Coach, Nike, Prada, Dolce & Gabbana, Chanel, Versace, Juicy Couture, and Tiffany & Co. were seized and had a retail value of $400,976.

Enforcing Our Rights Internationally

- **ICE-Proposed Global Surge Against Counterfeit Drugs Organized Through the WCO:** ICE has been working successfully with the World Customs Organization (WCO) to focus attention on intellectual property enforcement. In June 2010, as a result of an ICE proposal, 38 countries agreed to coordinate a global surge against substandard and counterfeit pharmaceuticals distributed internationally, called Operation Mercury II. The countries participating included **Mexico, Russia, China (Hong Kong), Germany, Sweden, South Africa, France, Mozambique, Uganda and New Zealand.** The U.S. efforts were coordinated by the IPR Center.
- **U.S. Trains Mexican Officials on Using Technology to Crack Down on Intellectual Property Offenses:** From June 15-18, 2010, the U.S. Embassy and CCIPS held a seminar about criminal law for cyber crimes and intellectual property offenses, as well as basic technological concepts, including electronic evidence and online investigations.
- **Mexico Increases IP Enforcement Powers at the Border:** On June 28, 2010, the President of Mexico signed into law an expansion of ex officio authority for intellectual property enforcement. This new law will significantly increase Mexican intellectual property law enforcement powers at the border and will allow customs officials to seize counterfeit and pirate goods on their own authority. Lack of enforcement authority at the border had been a significant concern for the U.S. for many years as highlighted in the U.S. Trade Representative's Special 301 Report and the Anti-Counterfeiting Trade Agreement negotiations.

If you would like to subscribe to this newsletter in the future, please e-mail the Office of the IPEC at IntellectualProperty@omb.eop.gov. If you would like more information about the Office of IPEC, including a copy of the 2010 Joint Strategic Plan on Intellectual Property Enforcement, please visit our website at http://www.whitehouse.gov/omb/intellectualproperty.