



International Chamber of Commerce

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An ICC initiative

BASCAP

Business Action to Stop
Counterfeiting and Piracy

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

9 August 2012

Dear Ms. Espinel:

On behalf of the member companies of the International Chamber of Commerce and its BASCAP initiative, I am pleased to submit the attached comments in response to your Request for Public Comment Regarding the U.S. Government's Intellectual Property Enforcement Strategy.

The ICC and BASCAP are committed to stopping the global problem of trademark counterfeiting and copyright piracy, protecting IP rights, strengthening IP enforcement and stopping IP theft. We fully support the overall goals and objectives established for IPEC, and we appreciate and recognize the outstanding work done over the past two years by IPEC and the U.S. Government enforcement agencies dealing with counterfeiting and piracy. A problem of the magnitude of the global counterfeiting and piracy epidemic requires ongoing diligence and effort, and there is much work still to be done. These comments are intended to provide suggestions for some of that critical work. We look forward to working further with IPEC, the IPR Center and the many agencies involved in fighting counterfeiting and piracy to build on the achievements and successes to date.

The comments below follow the three part format outlined in the Federal Register Notice of June 26, 2012.

Best regards,

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ICC/BASCAP SUBMISSION

The comments below follow the three part format outlined in the Federal Register Notice of June 26, 2012.

Introduction

Business Action to Stop Counterfeiting and Piracy (BASCAP), an initiative of the International Chamber of Commerce, welcomes the opportunity to respond to the request of the Intellectual Property Coordinator (IPEC) for comments to help shape the Administration's intellectual property enforcement strategy.

The ICC and BASCAP are committed to stopping the global problem of trademark counterfeiting and copyright piracy, protecting IP rights, strengthening IP enforcement and stopping IP theft. We fully support the overall goals and objectives established for IPEC, and we appreciate and recognize the outstanding work done over the past two years by IPEC and the U.S. Government enforcement agencies dealing with counterfeiting and piracy. A problem of the magnitude of the global counterfeiting and piracy epidemic requires ongoing diligence and effort, and there is much work still to be done. These comments are intended to provide suggestions for some of that critical work. We look forward to working further with IPEC, the IPR Center and the many agencies involved in fighting counterfeiting and piracy to build on the achievements and successes to date.

Part I: Strategic Recommendations

The six core strategies outlined in the original 2010 Joint Strategic Plan and the objectives set forth by the PRO IP Act continue to provide a sound framework for the ongoing work that needs to be done to reduce counterfeiting and piracy in the U.S. and around the world. With those strategies and objectives in mind, we offer the following comments for consideration in drafting the new strategic plan.

1. Leading By Example

- While the 2010 Plan dealt with ensuring the USG does not purchase or use infringing products, BASCAP believes there are other areas where the U.S. Government, through the IPEC's office, IPR Center and other actions, has led by example and created models and high standards for government action on protection and enforcement of IP rights. BASCAP recommends that the USG, through IPEC and the IPR Center, do even more to highlight the work being done through increased public communications efforts in the U.S. and internationally. Building awareness of the USG efforts builds awareness of the problem for the general public, but also shows other governments that IP protection and enforcement can and should be a priority even in a difficult economic environment. We recognize that a great deal has been done already, and that budget resources are tight and that enforcement efforts are the priority. However, a great deal can be done through participation in international forums to share best practices (including the Global

Congresses on Counterfeiting and Piracy) and increased public relations and communications to build awareness of the USG efforts would be well spent.

2. Coordination – Within the USG and With the Private Sector

- Increase Coordination with IPEC – BASCAP applauds the work done over the past year to increase cooperation and collaboration among the government agencies working on IP enforcement. The interagency IP enforcement advisory committee and the IPR Center are important steps in that effort. We encourage even closer and more transparent coordination with the IPEC.
- Voluntary Protocol Influence – BASCAP also appreciates the work done by IPEC to encourage voluntary protocols among key private stakeholders to increase cooperation and collaboration to stop the flow of fake goods. The work done to establish the Center for Safe Internet Pharmacies and the Payment Provider Portal and to encourage the voluntary agreement between the ISPs and the entertainment industry are models for other work among other stakeholders. We urge that the role of the USG, and IPEC specifically, in creating these voluntary efforts be included in the strategic plan.
- Public Awareness – BASCAP supports a strong role for IPEC coordinating the USG's efforts on public education and awareness, and in encouraging and facilitating greater cooperation internationally on building a common, unifying theme and messages that could be used around the world. BASCAP believes this is a critical element of any plan to deal with counterfeiting and piracy, especially any effort to reduce demand for these fake goods. Building awareness through better coordinated education campaigns should target government officials, decision makers and influencers, in addition to consumers. BASCAP has done extensive work to identify existing public awareness programs and to research consumer attitudes on purchasing counterfeits and piracy. **We believe strong government support and funding is essential to ensure that any communications program reaches the broadest audience with consistent and sustained messages over an extended period of time.** BASCAP has done considerable work on creating such a campaign theme and logo, and we are working with governments in several countries, including a program in cooperation with the EU's Observatory on Counterfeiting and Piracy, to deliver a message that "Fakes Cost More – I Buy Real" in multiple languages around the world. **While we are aware that the USG has initiated its own awareness program, we believe there are significant synergies in communications effectiveness to be achieved through better global collaboration and coordination on messages, themes, and logos. We urge the USG to participate, with BASCAP and a growing number of national governments (including the EU) in the "Fakes Cost More-I Buy Real" campaign so as to help create a unifying, global understanding of the harms of counterfeit products.**
<http://www.ibuyreal.org/>
- Consumer Attitude Research – A BASCAP study on consumer attitudes toward the purchase of counterfeits showed that consumers in general see little consequence in buying fakes. Their motives vary widely, from price and easy access, to social acceptability and a perception that a counterfeit purchase is a game which falls outside the law and to which there are no

consequences. Only when consumers appreciate the full repercussions of their counterfeit purchase can they be expected to stop the illicit practice. BASCAP believes this type of consumer research also provides important insights for governments in helping them fully understand the factors that drive their constituencies toward illegal activity, and institute programs to educate and protect consumers – and society – from the dangers of counterfeiting and piracy. **We are working with the EU Observatory to update and extend this research in all 27 EU countries, and we encourage the IPEC to participate in the project so as to build out a comprehensive global picture of consumer attitudes on this issue.** Details on the Study and the full report are available at: <http://www.iccwbo.org/advocacy-codes-and-rules/bascap/bascap-research/consumer-perceptions/>

3. **Enforcing Our Rights Internationally**

- **International Leadership** – BASCAP's membership includes many non-U.S. based multinational companies and much of our work is focused outside the U.S. We believe the USG has a critical role to play in protecting the rights of U.S. companies internationally, but also in working with other governments to protect intellectual property rights for all legitimate companies.
- **U.S. Embassy Engagement** – The work done thus far to increase the importance of IP rights and enforcement as a priority within USG embassies and consulates has been a critical step. BASCAP appreciates the cooperation of USG agencies and embassies in developing initiatives together in Turkey and Africa, and we encourage these types of efforts and cooperation to be a key element of the next strategic plan. **We recommend continued efforts in Turkey and Africa, but also welcome the opportunity for IPEC/US embassies and BASCAP to conduct similar cooperative efforts in India, Russia and Indonesia.**
- **ACTA** – ACTA remains a critical element of protecting IPR internationally and we urge the USG to redouble its commitment to implementation of ACTA in the next strategic plan. While ACTA has stumbled recently in the EU, **we urge the USG to continue working with other signatories to implement the provisions of the agreement and to enroll additional governments to sign. In addition, we strongly recommend that the USG and other ACTA signatories actively recruit additional nations into the protocol, which in our view will be essential to enhancing the value of ACTA. Finally, we wish to encourage the USG and other signatories to re-initiate negotiations with the EU in order to structure an ACTA agreement that addresses the concerns of the European Parliament.** BASCAP has continued to provide business views to national governments negotiating ACTA, most recently taking the lead in developing reports explaining the legal nature of economic benefits on ACTA in the European area. We will continue to undertake this work and welcome opportunities to work with USG and other nations to support ACTA. All papers can be found on the BASCAP website: <http://www.iccwbo.org/advocacy-codes-and-rules/bascap/international-engagement-and-advocacy/acta---business-reponse-and-updated-launch/>
- **IGO Leadership** – Many of the International Government Organizations (IGOs) to which the U.S. belongs are playing an increasing role in the discussions and decisions related to IP rights, protection and enforcement, and in direct enforcement actions. Many of these IGOs have come

under increasing criticism within their membership for policies and programs protecting IPR and combating counterfeiting and piracy. **BASCAP encourages the USG to take strong measures to take leadership roles in these organizations and to continue to counteract the actions of the critics of IP rights. Notably, recent studies conducted by the WIPO Chief Economist undermine, rather than support, the value of IP and the urgency to protect it in a world of rapidly increasing IP theft. If not already in place, we urge that those USG agencies and officers responsible for working with these IGOs be included in the interagency IP enforcement advisory committee and in coordination efforts.**

- Free Trade Zones and Free Ports – The production, reassembly and transshipment of counterfeits and counterfeit components through FTZs or Free Ports continues to be a significant problem. Goods passing through FTZ's or FP's and transshipped through multiple ports create opportunities for counterfeiters to disguise the true country of origin of goods. Counterfeiters also take advantage of customs territories where border enforcement for transshipped or in transit goods is known to be weak, with the intention of passing the goods through those customs territories to their destination, including the U.S. We urge the USG to take a more aggressive position in encouraging other countries to recognize these problems and implement procedures and regulations to disrupt the use of FTZs for the production, distribution and transshipment of infringing goods. **With respect to the point above on IGO leadership, we encourage the USG to work constructively within the World Customs Organization (WCO) to strengthen WCO's capability to provide WCO member governments with much needed guidelines on protecting Free Zone from abuse by counterfeiters and organized criminals. Finally, we also encourage the USG to implement Section 205 of the Pro-IP Act of 2008 which includes provisions prohibiting the transshipment of counterfeit goods.**

4. Securing Our Supply Chain

- Role of Intermediaries – BASCAP believes that the wide range of intermediaries involved in the supply chain for most products creates multiple opportunities for criminals to introduce counterfeit components into the system. The voluntary systems and guidelines for ISPs, payment providers and online pharmacies are good examples of effective steps to stop the infiltration of individuals and criminal networks into legitimate supply chains. BASCAP urges more focus on these intermediaries and will soon complete an exhaustive review of this subject that we will share with IPEC. While we recognize that technical solutions, track and trace technologies and authentication tools are frequently cited as key solutions, BASCAP does not believe that there is any "silver bullet" that will provide an answer and we have not seen any technology that will fit all industries and product categories. **We urge IPEC to continue to review the technical options, but to put increased efforts in finding other solutions to prevent or punish the intermediaries that introduce counterfeits into the legitimate supply chain. In addition, we encourage USG to take a leadership position on the G8 declaration to tackle the infiltration of counterfeits in the global supply chain. The G8 has called for business case studies to better communicate and remedy the problem. BASCAP is currently conducting such work, but will rely on G8 and USG leadership to transform the declaration into an actionable program.**

- Shippers and Other Delivery Channels – One of the critical elements of the supply chain is shipping and delivery of raw materials, components and finished products. While some attention has been given to the role of these intermediaries in the introduction and supply of counterfeit goods, BASCAP believes much more needs to be done and more urgent action is needed. **We urge IPEC to take the lead in bringing together the shipping companies and other delivery channel stakeholders to find solutions, hopefully voluntary, but also new legal and regulatory actions to stop the shipment of counterfeits are needed. As a first step, we recommend the USG, led by IPEC, to prepare a report on the role of shippers and other distribution operators (express delivery companies, postal systems), including detailed data on which companies are known to be delivering counterfeit components or finished products.** This report could lead to a report or index listing the companies who have taken steps to prevent the use of their systems by criminals; additionally, it could show companies who have been linked to transport of fakes.

Building a Data-Driven Government

- Despite numerous studies around the world showing the impact of counterfeiting and piracy on society, critics of intellectual property rights continue to challenge the data. The original Strategic Plan called for more work on this and the Department of Commerce report, Intellectual Property and the U.S. Economy: Industries in Focus, released in April, 2012, was an important addition to the growing body of research showing that IP is a key driver of economic growth, creativity and innovation.
- BASCAP has devoted considerable resources to adding to this body of research as well by funding reports by respected independent economics research organizations. We encourage IPEC and the USG agencies working on data collection to reference these studies and look for opportunities for even greater collaboration on research to quantify the value of IP and the impacts of counterfeiting and piracy.
- The establishment of an advisory group or working group on future research would help ensure the best practices from both the public and private sectors are considered in developing future studies and will help build on existing work rather than public criticism of the work done by the private sector.

Part II: THREAT ASSESSMENT

BASCAP agrees with the comments in the Federal Register notice that the issues, threats and challenges are rapidly changing and that new threats have emerged since the Joint Strategic Plan was released in June 2010. **BASCAP has been the sole organization to build upon the seminal work (assessing impacts) conducted by the OECD in 2008. BASCAP has also extended the scope of research to include key impact areas the OECD delineated but was unable to complete: value of the domestic trade in illicit goods; products sold over the internet, and social costs including costs to governments, the impact on jobs, economic development, innovation and creativity. The BASCAP**

report was published with the understanding that the collective body of data and methodologies (carried over from the OECD) could be advanced further by research groups or individual member governments. We encourage the USG to review work previously conducted by BASCAP and OECD and to build upon this research. <http://www.iccwbo.org/advocacy-codes-and-rules/bascap/economic-impacts/>

Part III: Optional Questions

With regard to the list of Optional Questions, we would like to respond with one point that we believe addresses several of those questions, including those dealing with 1) measures that can be taken to by the private sector or in conjunction with the public sector to share information on entities engaging in or supporting infringement of IP; 2) steps to further improve detection of express carrier and international mail shipments containing infringing goods; and 3) steps to improved risk assessments to better identify high risk shipments.

BASCAP recommends the creation of a data base and regular reports, perhaps including an index or ranking system based on the data that identifies the shippers of infringing goods into the U.S.

We recognize this would require significant coordination with the private sector, Customs authorities around the world, express carriers, postal authorities and shipping companies. However, there is no question that illicit goods only reach their intended destination, whether it is another player in the international crime networks dealing in fake goods or consumers, through one of these delivery systems. Choking off the shipment of counterfeit goods is a critical step in cutting off the supply of fakes.

Conclusion

ICC/BASCAP is pleased to have this opportunity to provide comments on the next Joint Strategic Plan on IP Enforcement. We appreciate the outstanding work done by the U.S. Government to protect IP rights, and congratulate the Intellectual Property Coordinator and all of the agencies dedicating resources to deal with the IP theft. BASCAP fully supports the strategies and objectives in the original 2010 Strategic Plan, and hopes that these additional comments will help build on those strategies and plans moving forward.

Intellectual Property protection is critical to creativity and innovation, economic growth and job protection and creation. The enforcement of IP rights protection is critical in preserving the strength of the U.S. economy and to protecting the safety and security of the public. The U.S. Government is in a unique position to set high standards for government protection of intellectual property.

We have seen the value of the U.S. Government's actions to implement new laws and regulations, to create the IP Enforcement Coordinator's office, and to establish the IPR Center as models for other countries. We remain confident that the USG will continue to provide important leadership to stem the flow of counterfeit goods around the world. We look forward to an opportunity to review the new Joint Strategic Plan once it is available. BASCAP stands ready to answer any questions or discuss these recommendations in more detail.

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