

## **UNITED STATES: The IP Enforcement Coordinator's Broad and Growing Mandate**

Published: December 21, 2022

Members of the INTA Anticounterfeiting Committee—United States Subcommittee met with Steve Aitken, Legal Advisor, Office of the Intellectual Property Enforcement Coordinator (IPEC) of the Executive Office of the President, and Summer Kostelnik, Policy Advisor for IPEC, met on September 23 to discuss recent updates on IPEC's efforts to protect brand owners from counterfeit goods.

Below are highlights from the conversation along with links to various IPEC and U.S. government (USG) intellectual property (IP)-related resources.

### **DOJ Training Program for Law Enforcement and Judges Is Driving Outcomes**

IPEC's various training programs have been a force for strengthening IP protection and enforcement in the United States and abroad. According to IPEC's Annual Intellectual Property Report to Congress (April 2022), IPEC works with various federal agencies to coordinate special training programs for stakeholders, including law enforcement officials and judges. Among those agencies are the U.S. Patent and Trademark Office (USPTO), the Customs Department at the Department of Homeland Security, as well as the U.S. Department of Justice. While planning these training programs with agencies, IPEC emphasizes the importance of the effectiveness of outcomes.

In particular, Mr. Aitken highlighted successes related to efforts by the Department of Justice's International Computer Hacking in Intellectual Property (ICHIP) attorney advisers. These ICHIP attorneys are stationed around the world and provide training to law enforcement officials in various countries. They address operational issues of law enforcement, such as seizing electronic evidence and using it at trial, as well as developing cases. Training sessions also address the development of laws in those countries and inform participants about various legal regimes that exist and legislative approaches that could be adopted. In other areas, customs officials train their local counterparts on interdicting goods. Patent officers also receive training on how to review patent applications in different technical fields.

Another area of successful training Mr. Aitken highlighted was training for judges. The USPTO partners with the Department of Justice to bring U.S. judges to other countries to discuss how to handle IP cases and elevate IP issues within the judiciary.

### **IPEC's Joint Strategic Plan Lays Out a Four-Part Strategy**

IPEC's Joint Strategic Plan, 2020–2023 (November 2020) is recommended reading if you have not dug into this report already. It covers the United States' IP enforcement policy and strategy and IPEC's plans "to ensure effective intellectual property protection and enforcement, domestically and abroad." While the report came out at the end of the prior administration, it still contains a lot of continuity regarding the problems presented by IP counterfeiting and copyright privacy.

A large section of the report is dedicated to how trademarks and counterfeiting relate to e-commerce, with a focus on reiterating the recommendations that the Department of Homeland Security (DHS) had set forward in the DHS-issued report in January 2020.

Most of those recommendations were directed at e-commerce platforms and the private sector, with additional recommendations for the U.S. government. Those issues have yet to be resolved and did, in

fact, get worse during the pandemic due to greater reliance on e-commerce during that period. E-commerce continues to be a high priority for IPEC.

### **Focus on Data Sharing to Fight IP Crime**

Sharing by brand owners and various agencies of data and intelligence concerning brand attacks and infringers can significantly improve investigation and enforcement efforts. Mr. Aitken pointed out that the IP rights center has worked on this issue with a number of stakeholders in the past. For instance, it worked with members of the Automotive Anti-Counterfeiting Council (A2C2) to build cases based on information shared among their members. There have also been discussions about data sharing between e-commerce platforms, DHS, and Homeland Security Investigations (HSI) to identify bad actors working across multiple platforms, which is often the case. The IP rights center continues to be at the forefront of these efforts, including promoting data sharing among the various USG agencies.

### **What Is on IPEC's Radar?**

Issues that the pandemic brought to light are still present today during the recovery. Those that have come to IPEC's attention through its interaction with different brand protection agencies include counterfeit personal protective equipment (PPE) and other materials. Even at the end of the pandemic, there is still a demand for those products. Added to that, the rise of non-fungible tokens (NFTs) and the metaverse could pose new issues as well.

IPEC has also been following various pieces of legislation moving through Congress, namely the Shop Safe Act and the Inform Consumers Act. While legislative approaches can be interesting, Mr. Aitken stressed that the private sector can take steps now to advance these issues. Indeed, it is unclear when these laws will be enacted, what form they might take, or how long they will take to be implemented once enacted. Legislation inevitably takes time to have the desired impact. In the interim, IPEC can work with the private sector to figure out alternative short-term stop-gap solutions.

### **The Special 301 Report and Notorious Markets Review**

The Office of the U.S. Trade Representative (USTR) issues the annual Special 301 Report, a review of the global state of IP protection and enforcement. It includes the Priority Watch List, which provides a breakdown of the countries and entities to monitor for IP protection. The Report is an expansive review based on stakeholder submissions and information from global IP attachés. The USTR oversees, manages, and spearheads the Special 301 process, with help from the State Department and the Department of Commerce. The interagency process also includes input from the Department of Treasury and Department of Labor. It is a robust exercise, and the Report has a lot of detailed information about copyright and trademark issues and a review of the global state of IP protection and enforcement.

The USTR also issues the annual Review of Notorious Markets for Counterfeiting and Piracy. The reporting process includes all relevant USG agencies so is similar to the Special 301 process. The Review focuses on non-governmental bad actors, both counterfeiters and pirates. It is a good resource for identifying them and bad marketplaces, especially online.

## **IPEC Would Like to Hear From You**

Mr. Aitken encouraged INTA members to reach out to IPEC with their opinions on international and domestic IP issues. Important reference reports produced by the USTR, such as the Special 301 Report and the Review of Notorious Markets for Counterfeiting and Piracy, are largely based on input from stakeholders. IPEC contributes to the development of these reports and Mr. Aitken stressed how important it is to hear from the community of brand owners and IP counsel to improve their quality. IPEC is open for comments regarding IP-related concerns via letters, calls, or email.

Additionally, Mr. Aitken underlined the importance of staying tuned in to the legislative process and providing public comments on proposals. As IPEC reviews legislative or rule proposals, public comments help the team frame the discussion and better understand the IP community's concerns.

## **A Closing Thought**

In a final point on communication, Mr. Aitken emphasized that the key to brand protection is strong collaboration between the private sector and the government. Success requires some creativity and trying different approaches. Legislation takes time. Solving today's challenges requires us to work together and think outside the box.