

Honorable Daniel Marti
U.S. Intellectual Property Enforcement Coordinator
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503
USA
16 October 2015

Dear Mr. Marti:

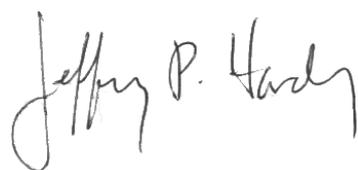
On behalf of the member companies of the International Chamber of Commerce and its BASCAP initiative, I am pleased to submit the attached comments in response to your Request for Public Comment Regarding the U.S. Government's Intellectual Property Enforcement Strategy.

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 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 and the many agencies involved in fighting counterfeiting and piracy to build on the achievements and successes to date.

Best regards,



Jeffrey Hardy

**ICC-BASCAP Submission,
to the Office of the Intellectual Property Enforcement Coordinator (IPEC),
in Response to the Request for Public Comment on the Third Strategic Plan for Intellectual Property
Enforcement**

October 16, 2015

Business Action to Stop Counterfeiting and Piracy (BASCAP), an initiative of the International Chamber of Commerce (ICC), submits the following comments and recommendations to the Intellectual Property Enforcement Coordinator (IPEC) in response to a request for input from the public providing specific recommendations for accomplishing the goals of the Joint Strategic Plan and for significantly improving the US Government's IP enforcement efforts.

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 third Joint Strategic Plan, covering the three year period from 2016 through 2019.

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 IPEC's goals and objectives, and applaud the work being done by the U.S. enforcement agencies and IPEC in the fight against counterfeits and piracy.

Despite progress on many fronts, the problem continues to grow. BASCAP estimated in 2011 that value of global trade in counterfeit and pirated goods would reach more than \$1 trillion and costs over 2.5 million jobs per year by 2015. We are confident that estimate has been met, or exceeded.

A problem of the magnitude of the global counterfeiting and piracy epidemic requires close cooperation between the public and private sector. There is much work still to be done, and these comments are intended to provide suggestions for some of that critical work.

1. International Engagement and Influence

The objectives listed for the Joint Strategic Plan include several focused on protecting intellectual property rights in other countries. BASCAP supports a strong role for IPEC in leading U.S. Government engagement on IPR protection and enforcement in other countries. BASCAP requests that the new Strategic Plan include specific reference to:

- **Free Trade Zones** – Free zones in a variety of forms and by different names continue to grow in number and importance around the world. The reduced regulations and taxes found in these zones provide many significant benefits to the host governments and the companies that do business in them. However, this reduced regulation and oversight creates an attractive environment for abuse by those involved in producing and distributing counterfeits. Curbing this abuse is a priority for BASCAP, and we have worked with the World Customs Organization (WCO) to promote a strong role for Customs in all FTZs. IPEC support is needed for broad

adoption by other countries of the WCO Kyoto Protocol, and specifically Annex D stipulating that FTZs are part of national territory.

- **G20** – As a leader of the G20 process, the U.S. Government can play a critical role in ensuring that intellectual property rights protection and enforcement are clear priorities among the G20 nations. BASCAP urges IPEC to work with others in the USG to have IPR raised at the G20, leading to a resolution committing member countries to make IPR a priority and/or to step up adoption, implementation and enforcement of WTO TRIPS agreement.
- **BRICS** – The significant development and growth BRICS countries has made them attractive targets for those engaged in counterfeiting and piracy. The problems in China are well known and documented. BASCAP has developed reports on Russia and India showing the significant impacts of illicit trade in these countries, and there is no question there are similar problems in Brazil and South Africa. BASCAP suggests IPEC include attention to stronger IPR protection and enforcement in BRICS countries as a strategic priority in the new Strategic Plan.
- **Illicit Websites** – The proliferation of illicit websites offering counterfeits and pirated materials continues to grow at alarming rates. More and more of these websites originate and are operated outside the U.S. We believe that more controls on these websites should be a priority in the Strategic Plan, including specific projects such as an index or other tracking of countries in which these illicit websites are operating unchecked. BASCAP stands ready to work with IPEC on

2. OECD

As a leading member of the OECD, the USG plays a key role in the OECD dealing with illicit trade and the quantification of counterfeiting. The OECD is expected to complete by the end of 2015, an update of its seminal 2008 report on the size of the international trade in counterfeits believes the USG can play a leadership role in urging other Member States to support an expansion of this new report to study the other enormous costs of counterfeiting and piracy. **The 2008 report, and the soon to be released update, look only at the amount of counterfeits moving across border, and do not include other costs such as domestic trade in counterfeits, digital piracy and trade over the internet or other costs to society and consumers such as loss of taxes, employment, etc.** BASCAP looked at these other costs in a 2011 report, and we stand ready to work with IPEC to explore how to gain support for a more comprehensive OECD report looking at the costs not covered in their new update.

3. Voluntary Collaboration Initiatives

Voluntary initiatives among rights holders and the many intermediaries involved in the legitimate supply chain are an essential element of stopping the infiltration of illicit goods into the global supply chain and curbing the increase in fake goods and pirated materials. We applaud the role that IPEC has played in several areas to encourage and facilitate such voluntary programs. We encourage IPEC to continue to take an active role in encouraging further dialogue and partnership among the relevant industry sectors.

BASCAP published a major report in 2015 on the **Roles and Responsibilities of Intermediaries which includes an overview of many of the voluntary collaboration programs and recommendations for expanding the best practices from these programs to other channels.** The BASCAP report covers intermediaries in the physical and online worlds, and we believe there is a key role for the IPEC to play in implementing the best practices in the report.

Building on the model created with IPEC's support to address the misuse of payment systems, BASCAP urges IPEC **to include similar efforts in the next strategic plan addressing online intermediaries such as internet platforms, ISPs, search engines, registrars and registries and internet advertising.** BASCAP's report includes recommended best practices in each of these areas and IPEC can play a key role in bringing the parties together to develop standards, guidelines and best practices agreeable to all.

In addition, BASCAP urges IPEC to **make shipping and transport of illicit goods a priority**, and take steps to bring together rights holders, express delivery services, and the numerous players involved in large-scale ocean-going cargo shipments, including customs brokers and freight forwarders, to the table to find solutions to the use of their services to transport illicit goods. BASCAP is reaching out to these intermediaries to discuss solutions and would welcome the support of the IPEC in bringing the parties together to find common-sense ways in which to implement new practices that will benefit all parties as well as consumers and society at large.

Where voluntary collaboration is not proceeding fast enough, IPEC can also play a key role in encouraging the use of state laws to deal with intermediaries. For example, landlords and property owners whose properties are used for the sale of counterfeit goods or other business operations supporting the trade in fakes can and should do more. One model is the New York Real Property Law which contains a section that specifically supports a finding of liability against a landlord for illegal acts committed by a tenant on the premises if the landlord was aware of the illegal acts and failed to take appropriate action. The New York state courts have concluded that trademark counterfeiting is an illegal activity under this statute, and it is therefore applicable to situations where counterfeit goods are sold from the premises.

4. Customs

Customs plays a critical role in stopping the entry of counterfeit goods into U.S., and BASCAP recognizes the outstanding work being done by CBP officers. **BASCAP requests IPEC's support for the Customs Reauthorization Act**, including provisions that provide rights holders with samples or unredacted photos of suspect products without prior notification of the importer. These provisions are essential in ensuring the ability of rights holders to assist Customs in identifying infringing goods.

Further, express delivery and international mail have grown dramatically as primary channels for the trafficking of counterfeit goods, and BASCAP recognizes the new challenges this presents for Customs officers. While we applaud the efforts of CBP to identify new options to deal with this challenge, BASCAP members have serious concerns about a CBP pilot program designed to increase collaboration with express delivery companies. **Specifically, our members are concerned about provisions that allow importers the option to abandon suspect shipments rather than subjecting the shipments to the formal seizure and forfeiture procedures.** Rights holders are given no notice of suspected shipment and no information on the importer. This lack of information inhibits the rights holders' ability to further investigate and take action against the criminals involved. We request IPEC's support in ensuring CBP is awareness of these concerns and in facilitating a dialogue among rights holders, CBP and the express delivery sector to find options for collaboration.

5. Public Awareness

BASCAP supports a strong role for IPEC in coordinating the USG's efforts on public education and awareness, and in encouraging and facilitating greater cooperation internationally on building awareness of the harms and costs of counterfeiting and piracy. Building awareness through better coordinated education campaigns

should target government officials, decision makers and influencers, in addition to consumers. 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 our materials are now being used in 22 countries. While we recognize the USG has initiated several consumer education programs, 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.**

Further, 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. The EU Observatory conducted a Consumer Perceptions study in 2014 using the same research firm hired by BASCAP, and we encourage the IPEC to include similar research in the new Strategic Plan.

6. Goods in Transit and Transshipment

Goods that are allowed to pass through one country to another even if the goods are suspected of being counterfeit or other illicit goods, or goods that enter a free trade zone or free port that are fake or are reassembled, should not be allowed to be passed off to another jurisdiction. This is particularly critical when those counterfeits pose risks to public health and safety. **The U.S. has recognized the urgent issue of transshipped and in transit goods. However, other countries have not, and we encourage IPEC to promote the establishment of procedures and legal frameworks in other countries through trade agreements, information and best practices exchange and/or other relevant and appropriate collaboration mechanisms to address this problem.**