



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

24 March 2010

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 Joint Strategic Plan for IP Enforcement being developed by the office of the Intellectual Property Enforcement Coordinator (IPEC).

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 welcome the opportunity to provide input into the development of IPEC's strategies and work plan. We fully support the overall goals and objectives established for IPEC and look forward to working further with you and your office in developing and implementing a comprehensive plan for strengthening the U.S. Government's intellectual property enforcement efforts.

This submission provides a brief overview of a number of key topics BASCAP considers to be of particular importance. We have conducted considerable research on several of these topics, which we would be happy to share with you as you develop your Strategic Plan,

Please do not hesitate to contact me for more information on this submission. We look forward to seeing the Joint Strategic Plan as it is developed.

Best regards,

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ICC/BASCAP SUBMISSION

In response to the request from the Office of the Intellectual Property Coordinator (IPEC) for Public Comment on the Joint Strategic Plan for IP Enforcement

Introduction

The International Chamber of Commerce and its Business Action to Stop Counterfeiting and Piracy (BASCAP) initiative welcome the opportunity to respond to the request of the Intellectual Property Coordinator for comments to the Joint Strategic Plan for IP Enforcement. ICC/BASCAP fully supports the overall goals outlined for the Joint Strategic Plan and we stand ready to work with IPEC to reduce the availability counterfeited and pirated goods, both in the U.S. and globally.

We recognize that many U.S.-based organizations will be providing comments focusing on those elements of the plan specific to U.S. IP enforcement issues. While ICC/BASCAP members include many U.S. based companies, and we support the comments provided by other organizations with similar goals and interests, we have attempted to limit our comments to those elements of the Federal Register Notice request related to the international and global aspects of the issues. As outlined in the Federal Register request, our comments are provided in two parts, with Part I dealing with the costs of counterfeiting and piracy and other infringements, and the threats to public health and safety, and Part II dealing with recommendations for enhancing IP enforcement.

Part I: Costs of Counterfeiting and Piracy and Threats to Public Health and Safety

BASCAP has worked closely with the OECD over the past several years in support of their efforts to measure the costs of counterfeiting and piracy on a global level. We support the conclusions reached in their landmark report published in 2008, and the update released in 2009 showing the value of counterfeit and pirated goods moving through international trade at \$250 billion. This report is a good starting point for calculating the full costs of counterfeits and pirated goods, but it only tells a small portion of the story. It does not include the value of the domestic trade in these illicit goods or products sold over the internet, nor does it include the costs to governments, the impact on jobs, economic development, innovation and creativity. BASCAP has been working to broaden the understanding of these other costs by partnering with respected and credible third party institutions to conduct studies in these other areas. The studies completed thus far include:

G20 Impact Study

This study, conducted by Frontier Economics, addresses the “Losses to Society” left un-quantified by the OECD Study. The report indicates the following:

- Counterfeiting and piracy are estimated to cost G20 governments and consumers over €100 billion every year. The G20 economies lose approximately €62 billion in tax revenues and higher welfare spending, €20 billion in increased costs of crime, €14.5 billion in the economic cost of deaths resulting from counterfeiting and another €100 million for the additional cost of health services to treat injuries caused by dangerous fake products. Finally, a number of G20 economies may be missing out on higher FDI as a result of concerns over IPR enforcement. That lost investment could give rise to additional tax losses of more than €5 billion across the G20. Counterfeiting also has a big impact on employment across the G20 economies. The analysis suggests that approximately 2.5 million jobs have been destroyed by counterfeiting and piracy – alternatively, if counterfeiting and piracy could be eradicated or seriously reduced, up to 2.5 million jobs could be created in the legitimate economies of the G20. It should also be noted that these estimates do not include secondary impacts on employment that may well be experienced by suppliers, retailers and other sectors in the supply chain.

Details available at:

<http://www.bascap.net/Docs/1sep09/Executive%20summary%20BASCAP%20final%20STC.pdf>

<http://www.bascap.net/Docs/1sep09/Final%20report%20BASCAP%20final%20STC.pdf>

Digital Piracy

The production and distribution of works by creative industries, including movies, music, television programs and software, has been recognized as having a positive effect on economic growth and the creation of jobs. Unfortunately, over the last decade digital piracy (copyright infringement of digital media) has increasingly threatened the economic performance of the industries responsible for these creative works. BASCAP worked with Tera Consultants (France), with support from labor unions and others to conduct a study on the economic contributions of these industries and of the losses resulting from digital piracy within the EU. These results are illustrative of the enormous impacts of digital piracy on society and relevant to the U.S. as well. The analysis determined the following:

- In 2008 the European Union's creative industries, contributed 6.9%, or approximately €860 billion, to total European GDP, and represented 6.5% of the total workforce, or approximately 14 million workers.
- In 2008 the European Union's creative industries most impacted by piracy (film, TV series, recorded music and software) experienced retail revenue losses of €10 billion and losses of more than 185,000 jobs due to piracy, largely digital piracy.
- Based on current projections and assuming no significant policy changes, the European Union's creative industries could expect to see cumulative retail revenue losses of as much as €240 billion by 2015, resulting in 1.2 million jobs lost by 2015.

Details available at: <http://www.iccwbo.org/bascap/index.html?id=35360>

Part II: Recommendations for Accomplishing the Objectives of the Joint Strategic Plan and Other Supplemental Topics

ACTA

A number of the objectives outlined for the Joint Strategic Plan relate to working with other countries in various ways to disrupt and eliminate infringing networks, strengthen the capacity of other countries to protect and enforce IP rights, reduce IP crimes, improve information sharing and/or provide training and technical assistance. BASCAP believes that finalizing ACTA is the best option at this time for addressing many of these objectives as the agreement will provide a new, higher standard of IP enforcement measures. We strongly urge that the Strategic Plan include a strong commitment by the U.S. Government to conclude this important agreement as soon as possible.

BASCAP continues to provide business views to national governments negotiating the Anti-counterfeiting Trade Agreement (ACTA). Six papers and two press releases have been developed to date. Our latest submissions in July were in response to a call for views from the New Zealand government and a posting of key negotiating topics by the parties.

BASCAP further recommends that the Strategic Plan include specific steps to enroll other countries into ACTA as soon as negotiations with the current participating countries are concluded.

All papers can be found on the BASCAP website: <http://www.iccwbo.org/bascap/index.html?id=16882>

Internet Sales and Distribution

Another key set of objectives and topics for the Strategic Plan deal with reducing the supply of infringing goods, domestically and internationally, disrupting and eliminating infringing networks, as well as securing the supply chain. BASCAP believes a key element in addressing these issues is to address the tremendous growth in the trade in counterfeits and pirated goods using the internet. The Strategic Plan must include steps to stem this trade through increased cooperation among all parties involved in the supply chain, include ISPs, marketplace sites, search engines, independent websites, third party payers, shippers and other intermediaries.

IP Guidelines

BASCAP recommends that the Plan include the development and distribution of toolkits, guides and other support materials to help local business and governments in the U.S. and internationally deal with the challenges of IP protection and enforcement. BASCAP has developed a set of IP Guidelines to provide information to businesses on practical steps they can take to protect their own creativity and innovation in IP-based products and services, as well as to protect against the risk of using counterfeit materials or infringing other companies' IP rights.

The BASCAP IP Guidelines for Business have been presented in six languages worldwide. We would welcome the opportunity to work with IPEC to further distribute these Guidelines or to help develop

additional tools for use by national governments who are interested in following U.S. models and experiences.

More information on the IP Guidelines can be found at:

<http://www.iccwbo.org/bascap/index.html?id=24276>

Increasing Public Awareness

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 influences, as well as 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. We stand ready to work with the U.S. Government, and other governments around the world to help develop such a program.

Consumer Perceptions Study

The BASCAP study on consumer attitudes toward the purchase of counterfeits looked at previous consumer research and included original qualitative and quantitative studies in five countries (UK, Mexico, Korea, India and Russia). The research shows 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 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 BASCAP Report summarizes an extensive body of research conducted over an 18-month period to better understand consumer attitudes and behaviors towards counterfeiting and piracy. Its objective is to enlighten communications tactics that can help change those attitudes and behaviors in ways that will help consumers more fully understand the repercussions of buying fake products – and ultimately deter these illegal and unsafe purchases.

Details on the Study and the full report are available at:

<http://www.iccwbo.org/bascap/index.html?id=33865>

Free Trade Zones and Transshipments

We believe a key issue in disrupting and eliminating the networks that produce and distribute infringing goods is for the U.S. Government to take a more aggressive position in dealing with the increasing problems presented in Free Trade Zones and the transshipment of counterfeits and counterfeit components through these FTZs or Free Ports. 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.

Conclusion

ICC/BASCAP is pleased to have this opportunity to comment on the Joint Strategic Plan. We fully support the goals and objectives outlined for the plan. 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, through the passage of the Prioritizing Resources and Organization for Intellectual Property Act of 2008, and the subsequent creation of the office of the Intellectual Property Enforcement Coordinator, is in a unique position to set a new standard for government protection of intellectual property. We are confident that the development of the Joint Strategic Plan will be an important step in creating a model of enforcement and support for IP for other countries to stem the flow of counterfeit goods around the world. We look forward to an opportunity to review the 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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