

A Guide to Building an Intellectual Property Rights Coordination Center

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Executive Summary

This paper has been produced for the International Trademark Association (INTA) to promote the establishment of Intellectual Property Rights (IPR) Centers at the federal level worldwide. INTA hired former Director of the United States National Intellectual Property Rights Coordination Center, Bruce M. Foucart, to draft this document to give interested national governments a step-by-step guide to establish a federal IPR Center using the U.S. example as a basis.

Why a Federal Intellectual Property Rights Coordination Center is Needed

Digital technology is forever evolving which calls for a need for a strong cyber security strategy. Due to the reach of digital technology, we must recognize the critical role that it plays in society. Although the Internet provides many benefits, the potential for organized cybercrime also reaches a global scale. The ability for cyber-criminals to hide behind the vastness of the Internet and to route through different jurisdictions is a considerable issue. Intellectual property infringements negatively affect the revenues of all parties involved and creates a significant impact economically and socially. In April 2016, the Organisation for Economic Co-operation and Development and the European Intellectual Property Office produced a report that illustrated that international trade in such products represented up to 2.5% of world trade, or as much as \$461 billion. The International Trademark Association (INTA) – Business Action to Stop Counterfeiting and Piracy (BASCAP) report confirms that this illicit trade will continue to increase and forecasts that will reach an estimated US \$991 billion by 2022. Based on these statistics, it can only be inferred that cybercrime will grow exponentially unless a solution is created. This solution would be a Federal Intellectual Property Rights Center (IPRC).

The Goal of the IPRC

The goal of the proposed office would be to establish a central coordination unit to fight against counterfeits, piracy, and other intellectual property crimes. Because of counterfeiting's links to organized crime, money laundering, threats to public safety, etc., many agencies at the national level are looking at this type of crime in isolation without developing the expertise to tackle the complexities of the crime. The IPRC would be a singular unit of coordination between the different industries effected by these crimes, the governmental officials that work to stop it, and the targeted public. The office would also provide coordination between the different governmental offices at the national level and would facilitate coordination between national officials and other jurisdictions globally.

Due to the ever evolving nature of the Internet and the cybersecurity strategies that must adapt to it, a federal office to fight intellectual property crime through collective coordination would be imperative to creating immediate and effective responses. Not only is it important to foster inter-departmental coordination, but, it is equally important to provide educational awareness to the public through a unified message which will greatly increase public safety.

International Examples

This paper is focused on the U.S. IPR Center as a model as it is the oldest and most established IPR Center worldwide. However, the model can be found in several jurisdictions worldwide, including but limited to:

United States – National Intellectual Property Rights Coordination Center (IPR Center)

The U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) led National Intellectual Property Rights Coordination Center (IPR Center) is the United States Government's response to global intellectual property (IP) theft and enforcement of its international trade laws. Created in 2000, the IPR center takes a multi-layered approach to combatting IP theft. The IPR Center combines investigation, interdiction, and outreach and training to combat the complexities of IP theft. The IPR center brings together 23 partner agencies, consisting of 19 key federal agencies, Interpol, Europol, and the governments of Canada and Mexico in a task-force setting. The collaboration of this task force enables the IPR Center to effectively use resources and skills from all aspects of the world to provide a comprehensive response to IP theft. The collaboration between these organizations has resulted in significant seizures, civil penalties, and criminal prosecutions - 538 arrests, with 339 indictments, and 357 convictions in 2015 alone.

Europe – The Intellectual Property Crime Coordinated Coalition (IPC3)

Europol and the European Union Intellectual Property Office (EUIPO) have joined together to create the Intellectual Property Crime Coordinated Coalition (IPC3) which builds on the strategic agreement signed between Europol and EUIPO in 2013. The IPC3 provides operational and technical support to law enforcement agencies globally by facilitating and coordinating cross-border investigations; monitoring and reporting online crime trends; enhancing harmonization and standardization of operating procedures to counter IP crime globally; and by reaching out to the public and law enforcement by raising awareness through trainings. The IPC3 recognizes the role that the Internet has in the enabling of illicit trade worldwide and the link between IP crime, money laundering, and cybercrime. The IPC3 was launched in July 2016.

China – National Leading Group on the Fight against IPR Infringement Law and Regulation (NLG)

In 2011, the State Council set up the National Leading Group on the Fight Against IPR Infringement Law and Regulation (NLG). The NLG unified the fight against IP infringement by formulating unified policies and measures to combat IP crime and increased inter-department cooperation. The NLG supervised and inspected different localities and departments and oversaw the handling of infringement and counterfeit cases. The NLG focused on five strategies: regular work meetings; promotions; inspection and supervision; statistical reporting; and performance appraisal systems which developed into long term solutions.

Mexico – la Unidad Especializada en Investigación de Delitos contra los Derechos de Autor y la Propiedad Industrial (UEIDDAPI)

Regulations added to the Federal Copyright Law (el Ley Federal del Derecho del Autor) in 1977 set out defined legal procedures, giving the Mexican Institute of Industrial Property (IMPI) the responsibility of IPR enforcement. Today, IMPI is responsible for promoting and protecting all industrial and intellectual property laws in Mexico; it oversees broad IPR enforcement and intervenes in copyright infringement that involve commerce. The law protects all original works that can be “disclosed or reproduced by any means” from the moment they are tangible, regardless of whether they have been registered. Mexico also has a specialized IPR-enforcement unit, la Unidad Especializada en Investigación de Delitos contra los Derechos de Autor y la Propiedad Industrial (UEIDDAPI), comprised of administrative, investigative, and preventative authorities concerned with IPR infringement. The UEIDDAPI is in constant communication with companies, organisms, and organizations that deal with the maintaining of IPRs. In 2015, Mexico has created a specialized task force focused on online crimes led by the Attorney General’s Office (Procuraduría General de la República).

About International Trademark Association (INTA):

Founded in 1878, INTA is a global association of brand owners and professionals dedicated to supporting trademarks and related intellectual property (IP) to foster consumer trust, economic growth, and innovation. INTA’s members are more than 7,200 organizations from 191 countries. INTA members collectively contribute almost US \$12 trillion / €8.8 trillion / ¥73 trillion to global GDP annually. For comparison, the 2016 annual GDP of the top three markets was \$11.2 trillion (China), \$16.4 trillion (European Union) and \$18.6 trillion (United States). The Association’s member organizations represent some 31,000 trademark professionals and include brand owners from major corporations as well as small- and medium-sized enterprises, law firms, and nonprofits. There are also government agency members, as well as individual professor and student members. As a not-for-profit association, INTA’s role is to serve its members and society as a trusted and influential advocate for the economic and social value of brands. Headquartered in New York City, INTA also has offices in Brussels, Santiago, Shanghai, Singapore, and Washington D.C. and representatives in Geneva and New Delhi.

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Introduction

The threat to the world's intellectual property (IP) is diverse, global, and growing. Infringing goods traditionally were limited to luxury goods, such as counterfeit handbags and watches. However, the advent of new technologies, combined with the high profits and perceived low risk of selling counterfeits, have made counterfeits increasingly more sophisticated and prevalent. Products in every industry—from automotive to health care to electronics—are now being counterfeited.

In 2016, the Organization for Economic Co-operation and Development (OECD) released a study estimating that, based on 2013 data, up to 2.5 percent of world trade, or as much as US \$461 billion, is commandeered by counterfeit and pirated goods.¹ Estimates for the total value of fakes sold worldwide each year go as high as US \$1.8 trillion.² In 2017, Frontier Economics estimated that the total value of counterfeit and pirated goods will be US \$1.9-\$2.81 Trillion.³ Just as important, especially to law enforcement, it is well-documented that criminal organizations are involved with counterfeiting. These same organizations use the proceeds gained from counterfeiting to invest in and commit other local and international crimes such as narcotics trafficking, money laundering and forced labor. The need for countries to develop and implement specific resources to address counterfeiting and related criminal activity is increasing.

The United States of America recognizes and addresses the counterfeiting challenge via its National Intellectual Property Rights Coordination Center (IPR Center), which stands at the forefront of the U.S. response to combat global IP theft and the enforcement of its international trade laws. Led by U.S. Immigration and Customs Enforcement's Homeland Security Investigations (ICE-HSI) and consisting of 19 federal investigative agencies and 4 international law enforcement entities, the U.S. IPR Center helps ensure national security by protecting the public's health and safety, and by helping to stop predatory and unfair trade practices that threaten the United States and the global economy.

This paper will discuss how a country can establish an IP rights coordination center of its own, using the U.S. IPR Center's best practices and will address some of the challenges that could possibly arise.

What is an IP Coordination Center?

An IP rights coordination center is a central coordination unit to fight against counterfeits, piracy, and other intellectual property crimes between the different governmental offices within a country, and will facilitate coordination between that country and other jurisdictions globally. An IP coordination center will consist of criminal and likely regulatory law enforcement agencies collaborating and working side by side to effectively leveraging the resources, skills, and authorities of each partner.

1. OECD/EUIPO (2016), Trade in Counterfeit and Pirated Goods: Mapping the Economic Impact, OECD Publishing, Paris.

2. *Counterfeit.com*, Economist, July 30, 2015.

3. The Economic Impacts of Counterfeiting and Piracy (2017); <https://www.inta.org/Communications/Pages/Impact-Studies.aspx>

Roles and Benefits of an IP Rights Coordination Center

The following is a list of specific responsibilities of an IP rights coordination center:

- Coordinate the investigation of sources of merchandise that infringe intellectual property rights to identify organizations and individuals that produce, smuggle, or distribute such merchandise.
- Conduct and coordinate training with other domestic and international law enforcement agencies on investigative best practices.
- Develop and expand the capability of such agencies to enforce intellectual property rights.
- Develop internal and external training programs.
- Coordinate, with customs, activities conducted to prevent the importation or exportation of merchandise that infringes intellectual property rights.
- Support the international interdiction of merchandise that infringes intellectual property rights destined for the country.
- Collect and integrate information regarding infringement of intellectual property rights from domestic and international law enforcement agencies and other non-federal sources.
- Develop a means to receive and organize information regarding infringement of intellectual property rights from non-law enforcement sources, such as the general public.
- Coordinate with the offices of the country's prosecutors in order to develop expertise in, and assist with the investigation and prosecution of, crimes relating to the infringement of intellectual property rights.
- Conduct outreach to private sector entities and the public. Each member agency and entity should have a role to educate consumers and other law enforcement concerning the harms of buying counterfeit goods.

The benefits of an IP coordination center include allowing participating agencies to centralize efforts, de-conflict different investigative leads, coordinate multi-jurisdictional investigations, and generate initiatives targeting identified threats and vulnerabilities. It also is a centralized location where private industry can coordinate and collaborate with the participating agencies, as well as identify and make valuable contacts with key enforcement personnel from these agencies within specific locations in the field.

Legislation to Establish an IP Coordination Center

It is likely that, when establishing an IP rights coordination center, a country's leadership will first create and institute an official order directing the establishment of the center, or perhaps a country's legislature will pass and enact legislation directing such, or both. This was the case for the U.S. IPR Center.

The U.S. Example

In 1995, with the issuance of Presidential Decision Directive (PDD)/National Security Council (NSC) 42, the U.S. government declared the critical importance of addressing international organized crime. PDD/NSC 42 called for those U.S. agencies involved with investigating organized crime to focus on investigating specific criminal activity including terrorism, narcotics trafficking, money laundering, alien smuggling, arms smuggling, trading in weapons of mass destruction, counterfeiting, and major financial fraud. The document called for these agencies to assist and work more closely with other governments to create a global response to these problems.⁴

In 1998, at the direction of the NSC (which is part of the executive branch) and in response to the administration's International Crime Control Strategy, the U.S. Customs Service (USCS) and the Federal Bureau of Investigation (FBI) were tasked with developing a plan for coordinating a U.S. government response to intellectual property crime. The USCS and the FBI took action, creating the IPR Center.

In 2000, the IPR Center officially created two divisions, enforcement and intelligence, with personnel derived from the USCS and the FBI. IPR Center personnel were a mixture of special agents, intelligence analysts and administrative support. The original staffing plan called for a total of 16 personnel, 8 from the USCS and 8 from the FBI. Conversely, both the USCS and the FBI dedicated many more field personnel within their various offices in the United States to conduct IP investigations. This is an example of how two governmental agencies used their available resources while trying to measure proper personnel of IP rights coordination center resources to field investigative resources. It is also an example of adapting to existing conditions that will be in place when such a center is in the early stages of being established.

When building a center, there is always the possibility that some other governmental priority could arise that could alter or even suspend plans going forward. Such was the case with the IPR Center in the United States. Shortly after establishing the IPR Center, the terrorist attacks of September 11, 2001, changed the immediate priorities within U.S. law enforcement and the intelligence agencies. Resources that had been devoted to counterfeiting investigations were then refocused on immediate national security and counter-terrorism cases. In 2003, the Department of Homeland Security was created, and there was a reorganization of the USCS into U.S. Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE), and many IPR Center staff, including FBI agents, were reassigned to other duties.

When establishing an IP rights coordination center, it is beneficial to have private industry support to ensure that the government is aware of the importance of the counterfeiting issue. A non-governmental entity—in this case private industry—can be an asset to development process by providing support and at times making recommendations to improve that development. Such was the case in the United States. In 2004, Congress allocated \$1.9 million to ICE to obtain dedicated space for the IPR Center. However, private sector entities, including companies and coalitions, recognized that the specific federal agencies

4. <https://fas.org/irp/offdocs/pdd/pdd-42.pdf>.

involved with IP enforcement at the time were failing to properly address the counterfeiting issue. As such, private industry called for an internal audit of the government's efforts to address the counterfeiting issue, which is what the General Accounting Office did in 2008. Following is a summary of its findings:

The National Intellectual Property Rights Coordination Center, an interagency mechanism created to coordinate federal investigative efforts, has not achieved its mission and staff levels have decreased. Currently, only one agency participates in the center's activities, which focus on private sector outreach. Agencies have lacked a common understanding of the center's purpose and agencies' roles. The center's upcoming move to a new location presents an opportunity to reconsider its mission.⁵

ICE-HSI dedicated the new IPR Center in Arlington, Virginia, on July 10, 2008, the same year the Intellectual Property Act of 2008 (PRO-IP Act) (Pub. L. No. 110-403), was passed. The Pro-IP Act ensured that the IPR Center now had the necessary resources and focus and established an outside (of the IPR Center) governmental figure and office to assist in IP enforcement. Within the United States, the Pro-IP Act established the White House Office of the U.S. Intellectual Property Enforcement Coordinator (IPEC), the committee responsible for developing the PRO-IP Act's three-year "Joint Strategic Plan against counterfeiting and infringement." In addition to its role in developing and implementing the Joint Strategic Plan, the IPR Center was mandated to collaborate regularly with the IPEC and other federal agencies on IP policy issues.⁶

In February 2016, Congress passed the Trade Facilitation and Trade Enforcement Act, which was signed into law by President Obama. This was the most comprehensive customs legislation in over two decades. While the legislation's primary focus centers on customs authorities and responsibilities of CBP, many of its provisions directly impact the IPR Center and ICE-HSI's responsibilities within trade fraud, intellectual property, and forced labor enforcement. Key aspects of the Trade Facilitation and Trade Enforcement Act of 2015 impacting the IPR Center included officially codifying, recognizing, and, now, formally establishing the IPR Center within ICE-HSI.

Participating Bodies

Which agencies should participate and why

During the initial stages of establishing an IP rights coordination center, meetings between the law enforcement agencies should take place to discuss the importance of prioritizing IP rights enforcement. To become a member of an IP rights coordination center, an agency or entity must have an interest and/or an active role in IP rights enforcement. Many of the domestic agencies will have specific authorities that facilitate IP rights enforcement. This is a good time during the process to seek specific information from private industry, because law enforcement personnel within the IP rights coordination center will be protecting the brands of private industry. Private industry personnel can speak to the economic ramifications of counterfeit sales, how intellectual property protection is critical to foster-

5. <https://www.gpo.gov/fdsys/pkg/GAOREPORTS-GAO-08-157/html/GAOREPORTS-GAO-08-157.htm>.

6. <https://www.dhs.gov/news/2016/06/15/written-testimony-ice-senate-committee-finance-hearing-titled-counterfeit-goods>.

ing future innovation, and how, without this protection, the full benefits of these innovations will likely not be realized. Additionally, frank discussions should occur regarding how certain counterfeit goods could harm consumers, thus creating a public safety problem.

When establishing an IP rights coordination center, IP law enforcement actions and authorities should consist of three primary functions—seizing goods, investigating crimes, and prosecuting alleged criminals. A customs agency should be responsible for seizing IP-infringing goods at borders, a function that also should include assessing penalties and / or denying entry to certain types of IP-infringing goods. Additional governmental agencies should share responsibility for investigating those suspected of IP crimes. The IP rights coordination center should seek input from countries with law enforcement entities that are involved with transnational criminal investigations—countries such as those that participate as members of Interpol or Europol—and the involvement of these countries should be of benefit to the center. These law enforcement entities will have experience in globally collaborating with other countries. Experience in collaboration with other countries will be essential, as IP enforcement is a transnational crime. Finally, a legal entity should be included in the team that will be responsible for prosecuting those accused of committing IP crimes. Within the United States, the Department of Justice (USDOJ) plays this role. Although the USDOJ is not a member of the U.S. IPR Center, the department works closely with the personnel at the center and with IP field investigators and prosecutors working IP cases.

Agencies will have to work together at an IP rights coordination center by performing specific functions and responsibilities defined below. By collaborating and working side by side in a “task-force” type setting, member agencies will effectively leverage the resources, skills, and authorities of each partner. A task force concept will allow agencies to centralize efforts, de-conflict different investigative leads, coordinate multi-jurisdictional investigations, and generate initiatives targeting identified threats and vulnerabilities.

For example, both CBP and ICE-HSI have search authority for goods and items entering the United States. The FBI prioritizes national security investigations and intelligence that assists in the enforcement of the theft of trade secrets. The FDA Criminal Investigative Division was established to focus on the illegal sale of adulterated and counterfeit medications, and is a member. By each agency providing its specific expertise and authorities, interdiction, investigation and outreach, and training, the mission of the IP rights coordination center will start to be defined. The current U.S. IPR Center’s mission statement is to promote national security by protecting the public’s health and safety, the U.S. economy, and our war fighters, and by stopping predatory and unfair trade practices that threaten the United States and global economies.⁷ This is a summary of the specific authorities and enforcement roles of the member agencies of the U.S. IPR Center. In the United States, the IPR Center now has 23 domestic and international partner agencies that collaborate and operate in a task-force environment.

7. <https://www.ice.gov/factsheets/ipr>.

Cooperation Mechanism: Developing Memoranda of Agreement (MOAs)

When decisions have been made as to what agencies will take part in an IP coordination center, it will be necessary to establish written policies and procedures regarding how the center will be run and maintained. Each member agency should memorialize their roles as rights coordination center partners via an initial MOA. These documents are usually signed by high-level officials within each agency and are roadmaps outlining each agency's role and, more importantly, precluding potential disagreements that could arise in the future between member agencies. However, as the IP rights coordination center progresses and new agencies are added as members, updated and superseding MOAs can be signed by all participating agencies.

Recommended Content

IP coordination center's participating interagency relationships will vary from country to country, however it is necessary that the following IP rights coordination center specifics be memorialized via MOAs including:

Staffing and Structure

Within an MOA, each agency of the IP rights coordination center should delineate its commitment of manpower and what leadership structure it will adopt. Within the early stages of building a rights coordination center, participating agencies should decide which agency will hold the director's role and for how long. It may be that the participating agencies decide to make the director's position a "rotating role" among each of the agencies and if so, an MOA is the best document to memorialize this. The roles and responsibilities of a director are discussed later in this document.

In addition to the director's role, each agency should define what its management presence will be and what the chain of command is. Each agency may want to keep an internal leadership structure for its personnel, meaning an agency's employees will follow management and leadership from within their own agency. In this case, respective agencies maintain day-to-day administrative supervision of their personnel. This structure is employed by the agencies that participate at the U.S. IPR Center. Conversely, an agency may decide to fully integrate its personnel into one leadership structure under the umbrella of the rights coordination center. In either scenario, each agency should document how many positions it will provide annually, including denoting the supervisory structure.

Information Sharing

One of an IP rights coordination center's biggest assets will be its ability to act as a clearinghouse of information not only for all of its members, but also for outside law enforcement and private industry. IP rights coordination centers should be set up to take referral information from any source, including a telephonic tip line, as well as a specific intake process for lead referral information from the public including the consumer as well as from private sector companies. This can be done via a link on a website, for example.

Referral information received by U.S. IPR Center personnel is analyzed for information and intelligence. The results are then forwarded to each IPR Center agency for further action. Personnel at the IPR Center then determine whether the lead is actionable to open or refer an investigation. If accepted for investigation at the federal level, IPR Center personnel will ensure the proper federal agency/agencies with investigative jurisdiction receive the referral of the case. For example, if a lead that has been received involves counterfeit adulterated pharmaceuticals, it is likely that special agents from the FDA, an agency member of the IPR Center, will take the lead and/or be part of the investigation. IPR Center personnel will then ensure connections are made between rights holders and specific field agents investigating the case.⁸ Generally, when working in a task force setting such as within an IP coordination center, agency representatives are respectful of each participating agency's authorities and jurisdictions, so there usually are not issues with information sharing between members. However, MOAs can document such and delineate each agency's authorities and investigative jurisdictions to ensure that proper information sharing occurs.

Financial Obligations

Within the MOA, each agency may decide to document an annual obligation or commitment of funds. Each agency's expenditures will be subject to its budgetary processes and the availability of funding and resources commensurate with existing legislation, regulations, and policies. This section of the MOA should also document which agency is responsible for the lease and maintenance of physical space.

Media and Public Relations Matters

Public relations and press-related events promote the successes of the IP rights coordination center and any upcoming planned events, such as enforcement operations. Additionally, public relations personnel can be key to educating the public and consumers regarding the dangers of counterfeit goods. Each agency will likely have its own public relations or public affairs personnel, or the IP rights coordination center may want to dedicate one office staffed by multiple agencies. In either instance, coordination and communication between agencies will be the key to success. When an agency prepares or anticipates issuing a press release or press event involving the IP rights coordination center's activities, it should, to the extent possible, notify and coordinate with the other IP rights coordination center agencies. This should all be defined and documented in the MOA.

Settlement of Disputes

This part of the MOA should specifically define the way agencies will resolve potential issues arising from not meeting their defined responsibilities or other problems that could arise. There should be some language in the MOA indicating that disagreements should be resolved via consultation between parties and/or other dispute mechanisms. It should also delineate language that allows an agency to terminate participation in the IP rights coordination center, a timeline of how that should occur, and the financial responsibilities an agency may incur as a result of that termination.

8. www.NCFTA.net.

Revision Mechanism

Even after an IP coordination center begins to take shape and roles are defined, there is the potential for membership participation to increase, or perhaps decrease, as time goes on. Such was the case with the IPR Center from its inception (2 agencies, the FBI and the US Customs Service) to the present, 23 member agencies as of 2016. The last two agencies as of this writing were officially added in 2015. As such, MOAs can and should be updated and/or new MOAs added to include the new roles and responsibilities of any new agencies.

Mission of an IP Coordination Center

An IP rights coordination center should initially establish and document its mission statement: a formal summary of the aims and values of the center. This may change over time as existing conditions require. As noted above, the U.S. IPR Center's current mission statement has evolved over time from this 2009 MOA that contained the mission statement "to strengthen IPR enforcement by acting as the consolidated U.S. government response to the global economic and health/safety issues posed by the illegal importation of counterfeit, sub-standard and unregulated commodities. This includes the seamless de-confliction and coordination of multi-jurisdictional/multi-national IPR investigations to maximize the effectiveness of the U.S. Government response to the IP threat."⁹

Leadership

The position of the director of an IP coordination center will normally be filled by one of the participating agencies. That agency may be codified by specific legislation within a country. In addition to a director, each participating agency may want to have its own IP rights coordination center leaders who fill roles as assistant or deputy directors to the director. At the U.S. IPR Center, ICE-HSI fills the director position and the FBI and CBP personnel take deputy director roles. As noted above, it may be that the agencies that make up the center decide to make the director's position a "rotating role" among each of the agencies for a defined period of time. This will need to be decided when the center is established.

Some examples of the leadership responsibilities for a director include:

- Developing an annual strategic plan and setting goals for the center.
- Ensuring that enough resources are devoted by each agency.
- Organizing and chairing key stakeholder meetings.
- Establishing an annual budget.
- Ensuring that financial obligations are met.
- Conducting media interviews and press conferences.
- Participating in public speaking engagements.
- Providing legislative testimony when required.

9. 2009 Memorandum of Agreement Between ICE and FBI Concerning Participation in the National Intellectual Property Rights Coordination Center.

Operations

In addition to the day-to-day investigations by field investigators and inspections by customs officials, an IP rights coordination center should conduct specific targeted operations, including those that involve specific commodities such as those that are of potential harm to consumers or to unknowing users of counterfeit products. This will include working with international law enforcement entities, such as those at the World Customs Organization, INTERPOL, EUROPOL, and any country that has recognized the need to collaborate internationally. For example, Interpol annually conducts Operation Pangea for one week, during which many of its member countries participate in taking down websites involved with the online sale of counterfeit and illicit medicines. The operation highlights, via international media, the dangers of buying medicines online. Though coordinated by INTERPOL, the annual operation brings together customs, health regulators, national police, and the IPR Center and supports field investigations throughout the United States and the world.¹⁰

The U.S. IPR Center initiates and supports ongoing operations and large-scale investigations. Some of the Center's significant initiatives are as follows:

Operation Engine Newity focuses on securing the supply chains of the automotive industry (and of other heavy industries) from counterfeit components. Counterfeit parts—including critical components such as airbags, bearings, brake pads, accelerator arms, and windshields—have proliferated exponentially over the last several years and now pose a significant health and safety threat to end-users and a cost to businesses and consumers through lost revenue, downtime, and replacement costs. As part of Operation Engine Newity, the IPR Center has been able to develop investigative leads to provide to field investigators.

Operation Chain Reaction was initiated by ICE-HSI, in June 2011, to combat the proliferation of counterfeit goods into the U.S. military and federal government supply chains. Chain Reaction involves 16 agencies and is the first operation in which the IPR Center partners and non-partners have collectively addressed this ongoing problem. One example of an investigation includes the prosecution of a Massachusetts man who knowingly imported thousands of counterfeit integrated circuits from China and Hong Kong and resold them to U.S. customers, including contractors, supplying them to the U.S. Navy for use in nuclear submarines.

Operation Team Player is an IPR Center initiative that targets the sale and trafficking of counterfeit sports merchandise and apparel, a multi-million-dollar industry. The trafficking of these items is a lucrative business for criminals and becomes more profitable in markets involving successful or popular sports teams. ICE-HSI special agents and CBP officers work with sports leagues and law enforcement agencies throughout the U.S. to identify shipments of counterfeit merchandise coming into the country, as well as vendors selling counterfeit items. The culmination of the sports season, all-star games and playoffs are events that especially stimulate the sale of counterfeit items in local communities around the country.

10. <https://www.interpol.int/Crime-areas/Pharmaceutical-crime/Operations/Operation-Pangea>.

Operation Apothecary was started in 2004 with a focus on the use of the Internet as the primary means for consumers to order counterfeit pharmaceuticals. Criminals, posing as legitimate pharmaceutical providers, advertise prescription grade drugs and/or inexpensive alternatives without requiring a valid prescription. The consumer purchases the pharmaceutical with the belief that the product advertised is a legitimate product, but in fact is often purchasing a counterfeit or unapproved version of the drug that may have been manufactured in unsanitary conditions or not subjected to any safeguards or quality-control regimes. Operation Apothecary also addresses potential vulnerabilities in the entry process that might allow for the smuggling of commercial quantities of counterfeit, unapproved and/or adulterated drugs via the Internet, mail facilities, express courier hubs, and land borders. Operation Apothecary utilizes the expertise of ICE-HSI, CBP, the FDA, and the USPIS.

Operation Guardian is a public health and safety initiative that is led by ICE-HIS and targets, interdicts, and investigates the importation of hazardous products, such as imported apparel, pet food ingredients, toys, and other consumer products. It combines the specific areas of expertise of ICE-HSI, CBP, the FDA, USPIS, the Department of Justice Computer Crime and Intellectual Property Section, the U.S. Consumer Product Safety Commission and the U.S. Department of Agriculture.

International Cooperation

The sharing of intelligence by an IP coordination center with other country's law enforcement official is critical. Because counterfeiting is a global problem, successfully targeting criminal organizations within a country almost always mean following leads and gathering evidence from other countries. It is essential that the member agencies of an IP coordination center develop and maintain established working relationships with investigators, agents, customs personnel, and prosecutors around the globe. Within most counterfeit investigations, leads will likely arise that require overseas law enforcement assistance. Some of the well-known international law enforcement entities that take part in global counterfeiting investigations include Interpol, Europol, the World Customs Organization (WCO), and the U.S. IPR Center. These entities will not only assist law enforcement with their investigations by providing existing intelligence and current counterfeiting trends for example, but also providing the right enforcement contacts worldwide.

Measuring and Communicating Performance

Measuring Performance

Most federal law enforcement agencies have internal annual performance measures and goals related to their authorities and mission statement. For example, performance measures can be based on specific enforcement results, such as counterfeit seizures, which is generally a goal of CBP inspectors at ports of entry. Additionally, arrests, indictments and convictions of counterfeiters can be measurable goal for criminal investigators in the field. Another measurable result can be the amount of investigations referred to the prosecutor's office.

As noted above, the Intellectual Property Act of 2008 (PRO-IP Act) (Pub. L. No. 110-403) established an outside (of the IPR Center) governmental figure, the IPEC, and its office to assist in IP enforcement. The IPEC and his/her office is responsible for developing a three-year "Joint Strategic Plan against counterfeiting and infringement." A strategic plan is a good mechanism that will also set specific goals, and measure performance by the center and its agencies to determine if they have reached those goals.

A country's legislative branch may also set goals for specific agencies and an IP coordination center. For example, within the U.S., the 2015 Trade Facilitation and Trade Enforcement Act requires annual Congressional reporting requirements by ICE-HSI and CBP. Such requirements include assigning sufficient personnel throughout the CBP and ICE to prevent the importation of merchandise infringing intellectual property rights, including three full-time CBP employees to the National Intellectual Property Rights Coordination Center. Also, that CBP ensure that CBP officers are trained effectively to detect and identify merchandise destined for the United States that infringes intellectual property rights, including through use of donated hardware, software, equipment, and similar technologies. Also, that DHS coordinate with competent law enforcement and customs authorities of foreign countries, particularly by information-sharing, to enhance their efforts and U.S. efforts to enforce intellectual property rights.¹¹

Engaging Private Sector

When establishing an IP coordination center, it is essential to have private industry support the IP coordination center and its participating agencies to ensure joint collaboration, as the participating IP coordination agencies will be protecting the IP rights of private sector. This collaboration should include regular meetings where intelligence is shared including investigative leads, the identification of criminals and their organizations, counterfeiting trends, and the introduction of new products that are counterfeited. For example, within Operation Chain Reaction noted above, quarterly meetings are held at the IPR Center including its participating members, manufacturers of military products and brokers involved with selling and procuring these products for the Department of Defense. Additionally, open lines of communication have to exist between government and the private sector ensure collaboration. Companies have to be readily accessible to customs agencies at the ports of entry to make timely determinations regarding the authentication of their products for the customs inspectors in the field.

11. <https://www.congress.gov/bill/114th-congress/house-bill/644>

Communicating Performance within Government and to the Media

Sharing an IP coordination center's performance and successes of its member agencies will be necessary to garner continued and future support within a country. It is likely that future economic support will come from a country's specific appropriating entity, such as the US Congress within the U.S. As such, this appropriating entity will want to read and hear of the IP coordination center's performance. Within the U.S., the IPR Center Director regularly briefs specific committees within Congress, updating key members with those performance results. It is also likely that participating agency leaders will also want regular updates of their agency's efforts. Within the IPR Center, this is done quarterly, again by the Director, with participating agency leaders.

The media is usually the best medium to keep the public updated regarding successful investigations and operations coordinated by the IP coordination center and conducted by member field personnel. Press releases and press conferences at the IP coordination center or in the field by personnel tend to be welcome ways the media can receive timely enforcement results, ask questions, and report them to the public. An IP coordination center should have a capable, and oftentimes aggressive, public relations officer to coordinate with the media to outline the IP Center's successes.

Conclusion

Today's global economy and e-commerce have made combating IP theft a more complex challenge than it was just a decade ago. An IP rights coordination center acting as a country's consolidated response to the global economic and health/safety issues posed by counterfeiting will succeed in strengthening that country's IPR enforcement. Collaboration in a task force setting enables the maximum amount of intelligence concerning IPR violations to be shared. It makes sense that a country with limited resources should share this information internally by encouraging inter-agency collaboration to take these threats on. This can be accomplished by establishing an IP rights coordination center where each of a country's unique law enforcement agencies with IP enforcement responsibilities can work together to develop a coordinated response to this problem.

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