

POLICY UPDATE

A TIME FOR ACTION

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I am coming up on my one-year anniversary as the Director of the National Intellectual Property Rights Coordination Center (IPR Center). That year has gone by quickly and been marked with numerous new projects and achievements for the IPR Center. In just the first month of 2020, we have seen some major milestones from the current administration concerning overall trade issues and intellectual property protection.

The U.S. - China Phase One Trade Agreement makes commitments to improve protection and enforcement of intellectual property rights. The United States-Mexico-Canada Agreement (USMCA) expands protections for intellectual property rights and includes new criminal penalties for theft of trade secrets, including cyber theft.

On January 23, 2020, the Department of Homeland Security (DHS) released its first report pursuant to President Trump's April 3, 2019, Memorandum on Combatting Trafficking in Counterfeit and Pirated Goods. This report includes recommendations, private sector best practices, and immediate actions to be taken by U.S. Government agencies. I would like to take a few minutes to focus on the latter document.

I am proud that Homeland Security Investigations (HSI) and the IPR Center played a critical role in the drafting of this document, and will play a significant role in the implementation of its action items and industry best practices. A full copy of the report can be found at our website, <http://www.iprcenter.gov>.

Counterfeit goods not only damage our economy, but also threaten consumer health and safety and our national security. While technology and e-

commerce have no doubt made our lives easier, it has also made fighting these illicit sales more difficult. The rapid growth of e-commerce platforms has helped fuel the growth of counterfeit and pirated goods into a half trillion-dollar industry. This report, crafted in collaboration with other government agencies and with input from private sector companies, identifies existing problems and potential solutions that e-commerce platforms and other third-party intermediaries must address with regards to counterfeits.

The report outlines eleven action items for DHS and other U.S. Government agencies which may be taken utilizing existing authorities and with regulatory or statutory changes. The report also outlines ten best practices for adoption by e-commerce platforms and third-party marketplaces. I want to take a moment to outline a couple of the action items involving the IPR Center.

The report recommends the formation of the *Anti-Counterfeiting Consortium To Identify Online Nefarious Actors (ACTION)*. ACTION will be led by the IPR Center and will be an expansion of the existing IPR Center E-Commerce Working Group (ECWG) which was established in 2017. The ECWG was established to foster and encourage the flow of actionable data and information between online platforms and relevant third-party intermediaries, as well as affected carriers, shippers, search engines, and payment processors. This effort, which is being worked cooperatively with the International AntiCounterfeiting Association (IACC) took competitors, brought them in the same room, and gave them a simple, yet daunting challenge. Work together, share data, and attack a common enemy to enhance the protection of IP for all. It only makes sense to challenge the companies that

companies that created e-commerce to be a part of the solution when it is their business models being exploited by these illicit groups. We look forward to the formation of ACTION and know that with robust collaboration between the private sector and third-party intermediaries we can drastically shrink the pool of potential targets and law enforcement will be able to focus on the larger criminal organizations.

The report also delegates authority to the IPR Center to "encourage, monitor and report on the adoption of, and the progress and effectiveness of, these best practices, through all means necessary within the scope of the legal authority of DHS and the Federal government." The IPR Center looks forward to working with our existing and new partners in the private sector on this effort.

The release of this report is just the first step, and soon, DHS and the IPR Center will be holding private sector listening sessions to further discuss the report and publishing implementation plans which will further outline our efforts moving forward.

It may sometimes seem that the fight against intellectual property theft is overwhelming and unwinnable, but if we are diligent, we will see success.

Abraham Lincoln once said, "The best way to predict your future is to create it". I want to assure you that the IPR Center will continue to look to the future. To create new programs and ways of thinking and to look for new ways to combat IP criminals and to continue making our highest priority protecting the health and safety of our citizens.



Mr. Steve Francis is responsible for the oversight of HSI's national programs related to trade enforcement, intellectual property, and counter proliferation.

Prior his assignment with the IPR Center, Mr. Francis served as the Special Agent in Charge (SAC) for HSI Detroit with an area of responsibility that included the states of Michigan and Ohio and was charged with investigating over 400 violations of U.S. laws in furtherance of promoting Homeland Security, Public Safety and Border Security.

Mr. Francis holds a bachelor's degree from Michigan State University.

Department of Homeland Security: Immediate Actions

- Ensure Entities with Financial Interests in Imports Bear Responsibility
- Increase Scrutiny of Section 321 Environment
- Suspend and Debar Repeat Offenders; Act Against Non-Compliant International Posts
- Apply Civil Fines, Penalties and Injunctive Actions for Violative Imported Products
- Leverage Advance Electronic Data for Mail Mode
- Anti-Counterfeiting Consortium to Identify Online Nefarious Actors (ACTION) Plan
- Analyze Enforcement Resources
- Create Modernized E-Commerce Enforcement Framework
- Assess Contributory Trademark Infringement Liability for Platforms
- Re-Examine the Legal Framework Surrounding Non-Resident Importers
- Establish a National Consumer Awareness Campaign

Best Practices for E-Commerce Platforms and Third-Party Marketplaces

- Comprehensive "Terms of Service" Agreements
- Significantly Enhanced Vetting of Third-Party Sellers
- Limitations on High Risk Products
- Rapid Notice and Takedown Procedures
- Enhanced Post-Discovery Actions
- Indemnity Requirements for Foreign Sellers
- Clear Transactions Through Banks that Comply with U.S. Enforcement Requests for Information (RFI)
- Pre-Sale Identification of Third-Party Sellers
- Establish Marketplace Seller ID
- Clearly Identifiable Country of Origin Disclosures