

THE PRESIDENT'S EXPORT COUNCIL
WASHINGTON, D.C. 20230

December 9, 2010

President of the United States of America
The White House
Washington, DC 20500

Dear Mr. President:

On behalf of the President's Export Council, we write to urge your Administration to give top priority to addressing the inadequate protection and enforcement of intellectual property rights (IPR) of U.S. manufacturers and service providers in foreign markets. We commend current efforts underway within the Administration to develop effective means of attacking the current high levels of IPR infringement in the markets of our major trading partners and to promote the development of strong global legal norms for the protection and enforcement of IPR. We strongly believe that beyond achieving new market access for U.S. exports, few initiatives hold greater promise for boosting exports and foreign sales, and promoting the sustained growth of well compensated U.S. jobs.

As you have often emphasized, American innovation and ingenuity are key factors in our global competitiveness. Goods and services protected by intellectual property laws are the cornerstone of our exports today. As Secretary of Commerce Locke stated in his remarks on the National Export Initiative, more than fifty percent of our exports depend upon some form of IPR. These exports have enormous upside potential, but that growth cannot be realized without effective means to combat IPR infringement worldwide.

A November 2009 study by the OECD concluded that in 2007 the international trade in counterfeit and pirated goods could amount to \$250 billion, more than double the estimate in 2000 and approaching 2% of world trade. The actual value of such illicit goods is far higher as the OECD survey excluded pirated digital products and goods that were produced and consumed in a single country. Despite this evidence, little progress has been made to turn the tide of increasing infringement of IPR.

For instance, the weak protection of utility patents undermines the ability of U.S. companies in the critical pharmaceutical, biotechnology, environmental and advanced material technology industries. Similarly, weak protection of design patents undermines the ability and motivation of U.S. companies to innovate and sustain the distinctiveness of their designs from computers to cars. Strong IPR protection leads to export growth and job creation in these fast-growing sectors, in which we are currently world leaders.

In addition, foreign sales and exports of the companies in the most copyright-intensive sectors of our economy amounted to some \$126 billion in 2007. The biggest obstacle to further growth of these exports is this: too many foreign markets are flooded with illicit copies of their movies, music, publications, videogames and software, and too many of our trading partners are responding inadequately to abate this deluge.

Legitimate companies invest huge sums in the creation and dissemination of copyrighted materials. They simply cannot compete effectively with organized pirate operations that incur no development costs, pay no royalties, evade all regulatory requirements, and pay no taxes on their ill-gotten gains. This is the biggest foreign market access barrier that the copyright industries face.

U.S. manufacturers and providers of patented or trademarked goods and services face a similar obstacle in reaching overseas markets that are saturated with copies and counterfeits of their products. Not only do counterfeiters free ride on the huge product development and marketing investments of patent, trademark, and service-mark owners; they also expose foreign consumers to shoddy and even dangerous knock-offs. This further poisons the well for legitimate U.S. exporters by diluting the value of their brand and undermining their reputation.

In this as in so many other areas, market access barriers translate directly into lost U.S. jobs. A recent economic study estimated that piracy of music, movies, business software and videogames costs our economy over 370,000 jobs, both within the copyright industries themselves, as well as “ripple effects” upstream and downstream in the supply and distribution chain.¹ Overseas piracy is clearly a major contributor to these job losses and must be curtailed by strong and sustained action. Counterfeiting is too profitable to be deterred by half measures.

It is therefore critical that efforts to improve IPR enforcement and to strengthen the legal standards of IPR protection in foreign markets be fully integrated with the National Export Initiative. Success in reducing the level of piracy and counterfeiting in the markets of our trading partners will translate into increased exports and foreign sales, and thereby contribute directly to a stronger U.S. economy and more robust domestic job growth.

A focus on addressing weak IPR protection and enforcement fits well with several of the objectives that you have set for the NEI:

- It reinforces efforts to remove barriers to trade. Reducing levels of IPR infringement has enormous potential to open markets that are, for all practical purposes, still largely closed because of the ready availability of pirated and counterfeit goods at a price far below that of goods from a legitimate source that must bear the full cost of innovation and development. U.S. exporters of a huge range of products and services, from movies and videogames to consumer goods and health care products, will benefit when more effective enforcement lifts these de facto trade barriers.
- It buttresses enforcement of trade rules. Nearly all of our major trading partners are obligated, under the WTO TRIPS Agreement, to effectively enforce design, patent, copyright and trademark laws, especially against those who engage in piracy and counterfeiting on a commercial scale. Bringing enforcement realities into line with these commitments will pay substantial dividends for U.S. exporters. Several of our trading partners have taken on significant additional enforcement obligations, in their Free Trade

¹ “The True Cost of Copyright Industry Piracy to the U.S. Economy,” Stephen E. Siwek, 10/03/2007.

Agreements with the U.S. In this regard, the world-class intellectual property chapter of the Korea-U.S. FTA should establish a strong foundation on which corresponding provisions of the upcoming Trans Pacific Partnership FTA or other future trade agreements could be built.

- Respect for IPR is a policy leading to strong, sustainable and balanced economic growth. When a trading partner cracks down on piracy and counterfeiting in its market, it fosters local innovation and creativity, builds respect for the rule of law, and lays a sound foundation for the healthy growth of its own high-tech sectors in areas such as e-commerce, biotechnology, advanced materials and environmental technology. This is a win-win outcome, leaving only the law-breakers as the losers.

While fully addressing the myriad challenges that U.S. IPR holders face in overseas markets will require a long-term, sustained effort, we believe there are several priority areas your Administration should focus on in the short-term, which can make an appreciable impact on this problem:

1. **Continue to empower the Intellectual Property Enforcement Coordinator (IPEC) and work with Congress to ensure that she has adequate resources and authority to effectively coordinate our government's IP enforcement efforts.** We know that your Administration has recognized the threat posed by widespread infringement of IPR of U.S. producers. In particular, we applaud the efforts undertaken by the U.S. Intellectual Property Enforcement Coordinator and other senior officials. Their work demonstrates an encouraging commitment by the U.S. to lead these efforts by example. Greater effectiveness and coordination in the U.S. IPR enforcement effort producing public successes in abating infringement will provide a robust model for our trading partners to emulate. The IPEC worked with other senior officials in your administration to release an ambitious IP enforcement plan in June 2010. This work demonstrates an encouraging commitment by the U.S. to lead efforts to improve global protection and enforcement of IPR by example. Greater effectiveness and coordination in the U.S. IPR enforcement effort producing public successes in abating infringement will provide a robust model for our trading partners to emulate. The IPEC must have the capacity to facilitate the proper implementation of the plan's initiatives targeted at improving protection and enforcement both domestically and in markets overseas.
2. **Ensure the U.S. government continues to negotiate and implement bilateral and multilateral trade agreements with strong IP provisions that build upon and do not diminish existing U.S. trade agreements, protect America's creations and innovations and will benefit all American industry sectors.** Such provisions are essential ingredients to incentivizing the development of original works, new technologies, promoting America's continued competitiveness, and driving U.S. export growth. We also encourage the Administration to press for a higher priority for intellectual property protection and enforcement issues in all relevant multilateral organizations in which the U.S. participates. Finally, it is vital that your Administration remain vigilant in international fora to ensure that strong IP protections are not undermined and emphasize the importance of patents to incentivizing innovation in these fora.

3. **Work to shutdown overseas websites that sell counterfeit goods and facilitate digital theft.** The explosive growth of broadband networks in many countries offers huge potential markets to U.S. copyright owners – in the long run. But in the short run, it has too often given the pirates a faster and cheaper means to steal U.S. intellectual property and to deliver it to consumers with little risk of detection or fear of punishment. The Internet also opens up new distribution channels for product counterfeiters. In many countries, the online marketplace is awash with pirated or counterfeit products, crowding out legitimate sources. Many of the most egregious infringement websites are hosted overseas, which presents a significant challenge to right holders' ability to take action. The U.S. Government must make it a priority to work with foreign governments to ensure reasonable methods and effective tools are used to prevent the distribution of illicit content not only in traditional marketplaces but over the Internet as well.

4. **Ensure that IP attaché programs within executive agencies – including U.S. Patent and Trademark Office, Department of Justice, and the Department of Homeland Security directorates –are robust and coordinated, and work with Congress to expand these programs into additional countries abroad.** IP attaches–stationed at American embassies in selected countries play a valuable role by working with U.S. businesses, as well as local officials and law enforcement to address IP protection and enforcement issues in various countries.

We look forward to working with you to make efforts to combat weak and ineffective intellectual property regimes abroad an integral and essential part of the National Export Initiative.²

Sincerely,



Jim McNerney

² Please note that this letter has been prepared by the private-sector appointed members of the PEC.