

Intellectual Property Watch

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New US IP Enforcement Plan May Have International Impact

By [Liza Porteus Viana](#) for *Intellectual Property Watch* @ 9:03 am

The Obama administration's release of its national intellectual property strategy yesterday was welcomed by many groups representing businesses and intellectual property holders who said it could serve as an example to other countries.

The [strategy](#) encompasses 33 enforcement strategy action items that fall within six categories of focus for the United States: (1) leading by example; (2) increasing transparency; (3) ensuring efficiency and coordination; (4) enforcing our rights internationally; (5) securing our supply chain; and (6) building a data-driven government.

"Combating counterfeiting and piracy requires a robust federal response," says the introduction of the report, which was released by President Obama's intellectual property enforcement coordinator (IPEC), Victoria Espinel, who was joined by US Trade Representative Ron Kirk, Attorney General Eric Holder, Vice President Joe Biden, Commerce Secretary Gary Locke and Homeland Security Secretary Janet Napolitano. "Our status as a global innovation leader is compromised by those countries who fail to enforce the rule of law or international agreements, or who adopt policies that disadvantage American industries."

"I say to those who are suffering from infringement: 'Help is on the way,'" Espinel said during a press conference releasing the report.

Watch a video of the [press conference here](#).

Biden said a comprehensive approach thus far has been lacking in this country, further alluding to the fact that up until now, there has been no proper cracking down on piracy at the federal level.

"Piracy hurts. It hurts our economy," as well as citizens' health and safety, he added, taking a hardline position. "Whether we're talking about fake drugs that hurt instead of help the patient or knockoff car tires that fall apart at 65 miles per hour that cause injury or death, counterfeits kill. Counterfeits kill. There's a reason why they're counterfeit – they don't know how to do it in the first place. It also, to state the obvious, stifles creativity."

He continued: "Piracy is theft – clean and simple. It's smash and grab. ... Intellectual property is no different."

While acknowledging the need to control IP infringement, public interest groups, academics and some US trading partners have continually raised concern that overly strong or unbalanced protection measures can also stifle creativity and innovation as well by limiting access to ideas and knowledge.

Under the "leading by example" category, the report says the US government will lead by ensuring the federal government does not purchase or use infringing

products. It will establish a working group to reduce the risk of procuring such products, and ban the use of illegal software by government contractors.

As to increasing transparency, the administration vows to further encourage public participation in intellectual property enforcement policy making and international negotiations. During trade negotiations, however, it notes that this objective will be pursued with consideration given to the need for confidentiality in international trade negotiations.

The process surrounding the Anti-Counterfeiting Trade Agreement (ACTA), which is being negotiated among a group of mostly developed nations and led by the United States and European Union, has been heavily criticised for its perceived lack of transparency.

"We [also] agree with her [Espinel's] emphasis on transparency in the development of IP enforcement policy, whether on domestic IP or in the context of foreign policy," said Gigi Sohn, president of Public Knowledge. "That would be a refreshing change from the development of the Anti-Counterfeiting Trade Agreement (ACTA), which was done behind closed doors. We wish the plan had included in its transparency discussion the Section 301 reports, which put countries on watch lists, for reasons not clearly or publicly explained and which appear dependent on industry statistics."

Sohn also said her group appreciates the discussion of "carefully crafted and balanced agreements" when it comes to preserving competition in private sector enforcement actions. "In our view, there private industry should not have the ability to cut off someone's internet access based only on unproven allegations without any due process."

There has been debate over whether the US government or industry should implement a "three strikes" rule that allowed repeat infringers' internet connection to be cut off. France has attempted such a law.

Biden noted that internet delivery companies, movie studios, the recording industry and others have stressed the need for a "strong and fair" way to crack down on illegal downloads. He said discussions are ongoing between the content community and ISPs, but "everybody needs to pull together to fight the harm" done by intellectual property theft.

"It takes cooperation between the content community as well as between the internet service providers," he said.

Enforcement across Borders

While the report says that the US needs to continue to raise concerns about IP enforcement in other countries – as it does via the Special 301 report released annually by the USTR – it will also now report on progress made in other countries that adopt best practices.

The USTR and the IPEC will also launch an interagency process to assess opportunities to further publicise and expand USTR's Notorious Markets list – a list of examples of internet and physical markets subject to enforcement action or that needs further investigation."

And the US will also work to provide the US Customs and Border Protection agency with the authority to share enforcement data with complainant rights holders, including denials of entry, seizures and other actions, when the CBP is banned by the International Trade Commission from importing infringing goods. Other international highlights include:

- The IPEC will establish an interagency committee with participation from the private sector on the counterfeiting of pharmaceuticals and medical products, including unlicensed internet pharmacies, and the proliferation of counterfeit drugs in Africa.

- The US government will ensure that personnel – including law enforcement – are stationed in countries where intellectual property theft is rampant. It will form enforcement work plans for embassy personnel and establish working groups within the embassies to implement those plans. The United States will also further work to reduce infringement internationally through increased global coordination on seminars, workshops, outreach and other training programs.

- Cracking down on foreign-based and foreign-controlled websites that infringe on American intellectual property rights and having federal law enforcement agencies encourage cooperation with their foreign counterparts on enforcement investigations, particularly in China.

- USTR will continue using ACTA and other trade agreements to enforce intellectual property rights and will, with the IPEC, initiate an interagency process to increase the effectiveness of Special 301 action plans aimed at getting countries off the watch list.

- Increasing international collaboration on IP issues with groups such as the World Intellectual Property Organization, World Trade Organization and World Health Organization.

- Educating and providing resources to businesses acquiring IP rights in foreign markets or exporting IP-based products to foreign markets, particularly those doing business in China.

- Increasing collaboration with the importing community to find effective, cooperative solutions to the flow of fake goods coming into the United States.

The Justice Department pointed out that the attorney general has met with foreign law enforcement officials from South America and Spain, industry CEOs and others to discuss the department's effort to emphasize the need for greater coordination and cooperation in the fight against intellectual property theft.

Mark Esper, executive vice president of the US Chamber of Commerce's Global Intellectual Property Center, said this strategy may cause others to ponder similar plans. The instalment of Espinel as the IPEC may also hammer home the idea that the United States is taking IP enforcement seriously, he added. As of January 2007, 23 countries and/or regions had intellectual property strategies included in WIPO's IP and New Technologies Database.

"Those two go hand in glove," Esper told *Intellectual Property Watch*. Other countries may conclude that "they, too, will need somebody at the top of their

government focused solely on IP and creativity.” He said the European Union is pondering the idea of such an official.

The Chamber commended the administration, specifically, for acknowledging the increasingly sophisticated problem of internet piracy. Biden also called on the private sector to do more to combat this type of theft.

“I am encouraged to see they have taken on the issue area growing the most quickly, the one that will be the most difficult to get under control,” Esper added.

Biden also specifically applauded search engines like Yahoo, Google and Bing, which in recent weeks took steps to stop selling advertising to illegal internet pharmacies.

Applause and comments also came from other groups such as the Motion Picture Association of America, Copyright Alliance, Progress & Freedom Foundation, National Association of Manufacturers and American Apparel & Footwear Association, as well as lawmakers such as Sen. Patrick Leahy, the Vermont Democrat who was the lead author of the 2008 legislation creating Espinel’s post. Leahy said he will discuss the plan with Espinel at the Judiciary Committee’s IPEC oversight hearing today.

Related Articles:

- [Industry Intellectual Property Enforcers Named To New Posts](#)
- [US Business Calls For IP Enforcement “Surge”, Seeks New Legislation This Year](#)
- [US Government, Industry De-Emphasise Multilateral System In Enforcement Push](#)

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