

Commercial Customs Operations Advisory Committee (COAC) Intelligent Enforcement Subcommittee

August 2019



U.S. Customs and
Border Protection



Intellectual Property Rights (IPR) Working Group

DRAFT BACKGROUND & RECOMMENDATIONS

eRecordation Background

Beginning in 2005, CBP designed and stood up its IPR eRecordation (IPRR) system which automated the recordation application process. The program was launched online in 2006. This effort moved the CBP recordation program into a paperless environment while streamlining the procedures and expediting the processes of recordation for federally registered trademarks and copyrights. Further enhancements were undertaken in 2014 to:

1. Automate the online renewal of existing trademark and copyright recordations;
2. Automate the online request for an extension of time prior to expiration;
3. Automate checking the status of a pending recordation application online
4. Automate the online application for Changes of Ownership

Trade Facilitation and Trade Enforcement Act (TFTEA) Section 304

To ensure that the owners of unregistered copyrights can record with CBP to receive border enforcement while their application for registration is pending at the U.S. Copyright Office (USCO), CBP added completely new functionality to allow for this capability in August 2016.

CBP Current Activities

- IPR Database Modernizations: IPRS (Public) and IPRiS (Internal) upgrades to improve user experience when searching CBP's IPR databases for Trademarks and Copyrights
- Sync-on-Demand (IPRR): "Real-time" functionality; elimination of lag-time—once a recordation is approved it is immediately available in IPRiS (at all CBP Ports of Entry), and in IPRS (public facing database)
- Data Extraction from USPTO: Complete overhaul of CBP's data collection methods to ensure accuracy, reliability, and efficiency in the IPR recordation processes
- Expanding System Capabilities: Increasing CBP's capability to collect a greater volume of data in order to enhance enforcement efforts; e.g., allowing right holders to upload product identification guides directly into and through their online application at the time of recordation
- Notification System: Creating an automated process whereby right holders are notified of upcoming expiration dates
- Data Integrity: Building, *inter alia*, sunset provisions into the eRecordation database to ensure the data contained therein remains up to date for enforcement purposes

IPR eRecordation Recommendations

Based on the background information CBP provided in its white paper on eRecordation, the IPR Working Group (IPRWG), which has over 50 members representing different sectors of the trade as well as CBP and ICE representatives, held several sessions to discuss the current eRecordation system and possibility for a future state. The IPR Working Group received a detailed presentation from CBP on the current eRecordation functionality and broke into a smaller team to focus on recommendations for improvements to the eRecordation system. Draft recommendations were prepared and presented to the IPR Working Group on Monday, August 12, 2019. After robust discussion, the COAC is pleased to present these recommendations.

eRecordation Automation

- 1) COAC recommends the following improvements to the eRecordation system:
 - a) **Electronic Updates:** Allow rights holders to update information electronically on specific products, such as adding new licensees or deleting former licensees, in a secure mode.
 - b) **Renewal Prompts:** The renewal process would be prompted, and subsequent responsive actions taken electronically by the rights holders.
 - c) **Interactive Recordation System:** Make the eRecordation system more interactive with the rights holder, permitting an exchange of more detailed information, in a secure mode, about products contained in the system in order to assist customs officers in identifying legitimate merchandise.

ACE Portal Automation

- 2) **FP&F Notices and Supplier Information:** COAC recommends that CBP include the actual supplier of the merchandise on the Fines Penalties & Forfeitures (FP&F) notice relating to transactions involving Third Party Marketplaces so a rights holder can determine if a product in question is being sold by a legitimate supplier in the eCommerce supply chain. Today an FP&F notice includes a description of the property, piece count, appraised domestic value of the goods, description of the trademark, CBP recordation number, USPTO registration number, country of origin, importer and exporter name and address but does not include the actual supplier of the goods when purchased through a Third Party Marketplace platform.
- 3) **Detention and Seizure Linkage:** COAC recommends functionality be built in ACE where an importer and the rights holders can view detention and seizure information. Additionally, there needs to be a linkage between the detention outcome and the subsequent seizure determinations. Currently, seizure notices do not refer or tie to detentions. There should be the ability to connect and trace detentions to seizures. As a short-term solution, the CBP Centers of Excellence & Expertise should work with their Partnership accounts to share this information.
- 4) **Intelligence Sharing:** COAC recommends functionality be built in ACE to allow intelligence sharing which provides the means for CBP, rights holders and importers to exchange intelligence, on a confidential basis, on IPR violations and violators resulting from reliable investigative findings.

IPR Presidential Memo Recommendations

In response to the Presidential Memo on Combatting Trafficking in Counterfeit and Pirated Goods, the COAC submitted public comments to the Department of Commerce under Docket Number 190703544-9544-01. The COAC comments can be found at the following link:

<https://www.regulations.gov/document?D=DOC-2019-0003-0090>.