

**Commercial Customs Operations  
Advisory Committee (COAC)  
Intelligent Enforcement Subcommittee  
Intellectual Property Rights Process Modernization  
Working Group Recommendations**

December 2022



## COAC Intellectual Property Rights (IPR) Process Modernization Working Group

The COAC Intellectual Property Rights Working Group (IPRWG) consists of participants from government and industry, including current members of the COAC, rights holders, importers, carriers and additional subject matter expert representatives of the industries and entities most concerned with IPR violations.

At the commencement of the 16<sup>th</sup> Term of the COAC, the IPRWG reviewed the outstanding recommendations from the April 2020 and the March 2021 COAC meetings. The WG's goal was to synthesize and build upon the work previously established by COAC members by developing new recommendations focused on operational deliverables that would benefit rights holders, importers, CBP, and the wider trade. This included three main areas of focus:

- Automation of the Detention and Seizure process.
- Enhancements to the IPR priority trade issue (PTI) website (Intellectual Property Rights U.S. Customs and Border Protection Preview (cbp.gov)).
- Alternatives to seizure to avoid unnecessary costs and delays in handling small and uncontested shipment seizures, including destruction and/or manipulation of detained goods to allow release of non-infringing goods accompanying goods that may be potentially infringing.

This report includes the IPRWG's first set of recommendations resulting from the WG's robust discussions, which were informed by active CBP engagement with the working group.

### **I. A Single Automated System**

- The COAC recommends that CBP automate the agency's detention and seizure process. In automating the process, CBP's systems (ACE, SEACATS, etc.) should be paired, so that they can function together **as a single automated system to address all CBP enforcement priorities**, which can be appropriately linked to entry and line-item data housed with CBP. Although, this recommendation was developed in the IPRWG, the detention and seizure process encompasses many different enforcement priorities, including IPR, forced labor, restricted goods, and admissibility issues enforced on behalf of other agencies such as the Food and Drug Administration (FDA), all of which must be serviced by a single automated system.
- The COAC recommends that as a part of this automated system, in the near term, CBP develop and adopt electronic exam/detention/imaging technologies and procedures that can be used by officers to collect data onsite during exam
- The COAC recommends that as a part of this automated system, in the near term, CBP develop and adopt the means to generate electronic notices of detention for transmission to interested parties and that those notices include mandatory and standardized data elements, including images as appropriate, to provide meaningful information to interested parties regarding the basis for any

detention.

- The COAC recommends that as a part of this automated system, in the near term, CBP develop and adopt the use of a unique identifier as a reference number. This unique identifier, which should not be subject to the restrictions of the Trade Secrets Act, can then be referenced throughout the process by all interested parties.
- The COAC recommends that CBP develop and adopt a system for receiving and using email addresses from importers and other interested parties to facilitate communication within this automated process.

## II. **A Portal to Provide Enhanced CBP Communications for Importers, Rights Holders and the Trade**

- The COAC recommends that CBP develop a portal that can be accessed via the IPR priority trade issue (PTI) website (Intellectual Property Rights | U.S. Customs and Border Protection Preview (cbp.gov)) to allow for direct and confidential communications between CBP and interested parties such as rights holders, importers, shippers, and others. CBP relies upon information from a variety of sources to make informed decisions on IPR enforcement, and its decision-making will be enhanced through direct communications with those sources in an electronic environment provided that sensitive shared information is maintained as secure and confidential.
- The COAC recommends that with respect to **RIGHTS HOLDERS**, the portal allow for the creation of password protected accounts for rights holders that have recorded their marks with CBP. That portal account should allow:
  - **ACCESS** - rights holders should be able to access notifications and, as appropriate, images from CBP concerning shipments including allegedly infringing merchandise.
  - **SHARE** – rights holders should be able to exchange information and images with CBP relevant to specific enforcement actions that can be tracked utilizing a unique identifier, which can be referenced throughout the enforcement process.
  - **INITIATE & PROCESS** –CBP and rights holders should be able to use the portal to initiate and process CBP activities, including manipulation and abandonment, throughout the enforcement process, including during detention.
- The COAC recommends that with respect to **IMPORTERS AND OTHER INTERESTED PARTIES**, the portal incorporate a search mechanism. The search mechanism should allow:
  - **ACCESS** – importers and other interested parties should be able to utilize a unique identifier to access notifications and images from CBP concerning shipments that are detained for allegedly including infringing merchandise.

- **SHARE** – importers and other interested parties should be able to utilize a unique identifier to exchange information, images, and file responses and/or petitions with CBP relevant to specific actions throughout the entire enforcement process.
- **INITIATE & PROCESS** – importers and other interested parties should be able to utilize a unique identifier to initiate and process CBP activities, including manipulation and abandonment, throughout the enforcement process, including during detention.