

Commercial Customs Operations Advisory Committee Intelligent Enforcement Subcommittee Government Issue Paper: Intellectual Property Rights

September 2022



U.S. Customs and
Border Protection

INTELLECTUAL PROPERTY RIGHTS (IPR)

Action Required: Informational

Background:

- In late October 2020, U.S. Customs and Border Protection (CBP) asked the Commercial Customs Operations Advisory Committee (COAC) to further develop, expand upon, and align three previous recommendations pertaining to Sharing of Detention Information, Photographic Standards Guide, and Data- Driven CBP Seizures Process.
- The Intellectual Property Rights (IPR) Working Group (IPRWG) focused on developing a model that appropriately accounts for and incorporates:
 - A cost-sharing framework that reduces the burden of storage, detention, seizure, and/or destruction of IPR violative goods.
 - A tiered approach for the disposal, detention, and/or seizure of shipments, based on key shipment characteristics (e.g., parcel size, quantity, or value).
 - The effective use of new or emerging technologies for the enforcement of IPR.
 - Information sharing needs.
 - Current laws that should be amended to enable the implementation of new processes.
- The IPRWG met regularly since October 2020 to discuss implementation solutions to the identified recommendations mentioned above, and in late January 2021 presented its written report on the status.
- In early 2021, the IPRWG went on hiatus to reorganize and allow CBP the opportunity to implement some of the recommendations provided to CBP. Since that time:
 - CBP began concurrently issuing the notice of seizure (NOS) and initiating publication of the notice of intent to forfeit on all seized shipments with a domestic value less than \$2,500, on January 4, 2021. Although publications are advanced, all interested parties are afforded the same opportunity to respond to the NOS as they had under previously existing procedures.
 - CBP began to email NOS to rights holders via the email addresses provided to CBP through the IPR e-Recordation program on June 7, 2021. Delivery of seizure notices via email allows for instantaneous notification to the rights holder.
- On May 26, 2021, CBP signed a Memorandum of Understanding (MOU) with the U.S Chamber of Commerce to increase cooperation in protecting intellectual property rights. The MOU outlines general terms for future information sharing that will help stem the tide of counterfeit goods entering the U.S.
- CBP reactivated the IPRWG as part of the 2022 COAC to identify opportunities to enhance trade and CBP practices, policies, and programs in relation to the interdiction of violative counterfeit goods.
- Since reactivation, the IPRWG has held regular meetings to discuss pragmatic and practical recommendations for improving communications with CBP, rights holders, and importers to develop strategies for streamlining the seizure process.

Issue:

- U.S. Customs and Border Protection (CBP) is charged with the authority to target and seize imports of counterfeit and pirated goods entering the United States.
- During Fiscal Year 2021 CBP made over 27,000 seizures with a manufacturer's suggested retail price (MSRP) of \$3.3 billion had the goods been genuine. As of August 2022, CBP has made almost 17,000 seizures with an estimated MSRP of \$2.4 billion had the good been authentic.
- CBP has taken steps to combat counterfeit goods, especially in the small package environment, and in keeping with a recent U.S. Government Accountability Office (GAO) recommendation, we are working to further streamline our enforcement approach.
- To further progress in these IPR enforcement space, the IPRWG is focusing efforts on three items:
 - The automation of the detention process.
 - The ability to manipulate shipments so that they do not violate CBP's admissibility standards.

Prepared by: Christopher Mabelitini, Acting Director, Office of Trade, CHRISTOPHER.MABELITINI@cbp.dhs.gov

Date: August 22, 2022

- Review and identification of improvements to the IPR Priority Trade Issue CBP.gov webpage.
- The Office of Inspector General for the Department of Homeland Security (OIG DHS) also published a report in July 2022 entitled "DHS and CBP Should Improve Intellectual Property Rights Management and Enforcement". The report includes a list of recommendations aimed at improving DHS and CBP IPR management and enforcement.

Next Steps:

- In February 2022, CBP met with the IPRWG to discuss working group priorities and gather trade community input. Based on the feedback, CBP is conducting an internal review of all COAC IPR recommendations and is working to prioritize the implementation of the existing recommendations.
- The IPRWG is expected to make recommendations based on some of the three priority focus areas identified by in the 2022 COAC term.
- CBP is also working internally on meeting the recommendations listed in the OIG DHS report but will also seek IPRWG input on how to address the challenges raised in the report.