

**ADVISORY COMMITTEE ON COMMERCIAL OPERATIONS TO
U.S. CUSTOMS & BORDER PROTECTION**
GOVERNMENT REPORT ON INTELLECTUAL PROPERTY RIGHTS ENFORCEMENT
OCTOBER 2015

Current Status

The Advisory Committee on Commercial Operations to U.S. Customs and Border Protection's Trade Enforcement and Revenue Collection Subcommittee (TERC), and its Intellectual Property Rights Working Group (IPRWG) provide advice and recommendations to U.S. Customs and Border Protection (CBP) on improving Intellectual Property Rights (IPR) enforcement. The TERC continues to examine CBP programs and processes used to facilitate legal trade while supporting its mission to effectively and efficiently enforce against violative goods. At the May 22, 2014, Public Meeting, the COAC made three principal IPR recommendations to CBP focused on (1) Simplified Enforcement for Express Consignment, (2) Document Imaging System, and (3) Voluntary Disclosure.

Simplified Enforcement for Express Consignment

The COAC recommended that CBP collaborate with its express consignment industry partners and stakeholders to develop a simplified and mutually beneficial IPR enforcement process in the express consignment environment through which CBP would offer the importer and the U.S. consignee an abandonment option on detention notices for shipments detained by CBP on suspicion of trademark or copyright violations.

- On November 1, 2014, CBP successfully implemented a pilot at the UPS Express Consignment Facility in Louisville, KY to streamline procedures for the administrative processing of small shipments in the express consignment environment.
- In February 2015, CBP expanded this pilot to the DHL Express Consignment Facilities in Cincinnati, OH and Los Angeles, CA. Then, in April 2015, the program was expanded a second time to the DHL Express Consignment Facilities in Miami, FL and New York City, New York.
- To date, over 2,800 interdictions have been made using this process, at great savings of CBP time and expense.
- In terms of overall IPR enforcement actions, this represents an additional 11.5 percent interdiction rate over the course of last year.

Document Imaging System

The COAC recommended that CBP pilot the use of the Document Imaging System (DIS) in ACE over the course of 12 months as a means for importers and customs brokers to voluntarily provide information to assist CBP in assessing a shipment's IPR risk.

- In September 2014, CBP began solicitation for program volunteers from a variety of industries to transmit advanced IPR authenticating documentation and information about a shipment's IPR compliance via DIS, in an effort to expedite release of legitimate goods and reduce transaction costs.
- CBP identified several volunteers to test whether DIS can be used to provide facilitation benefits to legitimate importers.

- Participation in the pilot slowed down after it was found that the potential benefits of the program did not warrant the amount of effort involved to electronically submit information through DIS for each shipment.

Voluntary Disclosure

The COAC recommended that CBP consider piloting an IPR Voluntary Disclosure program allowing members of the trade to provide CBP with intelligence for targeting purpose by voluntarily disclosing violations of the laws prohibiting importation of goods infringing U.S. registered trademarks or copyrights, without incurring liability for any otherwise applicable CBP fines and penalties. A sub-working group of the COAC-TERC-IPRWG, specific to this initiative, was formed in order to further consider this recommendation.

- The Voluntary Disclosure Working Group determined that because of the potential litigation risk to CBP by the proposal, and the lack of significant potential benefits to the trade community, a pilot of this program is not viable at this time.
- CBP continues to encourage the voluntarily submission of trade intelligence related to suspect shipments through existing avenues of reporting, e.g., CBP e-Allegations link on the CBP.gov website or the IPR Center Intake system at www.iprcenter.gov.

BACKGROUND

In 2013, the Office of the U.S. Intellectual Property Enforcement Coordinator, within the Administration's Office of Management and Budget, released the 2013 Joint Strategic Plan on Intellectual Property Enforcement. A key part of this strategy is for CBP to develop a three-year plan which focuses on working with express carriers on counterfeit shipments.

We have received a lot of questions about what information we can provide about shipments that are processed through the voluntary abandonment program, and are working diligently to address them. In developing new approaches to streamline the processing of small packages, we are mindful that all parties involved in IPR enforcement activities must be afforded proper due process.