

GLOBAL INTELLECTUAL PROPERTY CENTER

OF THE

UNITED STATES CHAMBER OF COMMERCE

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February 9, 2011

The Honorable William M. Daley
Assistant to the President and Chief of Staff
The White House
Washington, DC 20500

Dear Mr. Daley:

We are pleased that you have joined this Administration, and we would like to take this opportunity to make you aware of the key challenges and priorities that U.S. businesses small and large face with respect to protecting intellectual property (IP) rights in the U.S. and abroad. The Administration has taken important steps to address this issue including the Vice President's significant leadership as a champion of IP rights, the appointment of the first Intellectual Property Enforcement Coordinator in the Executive Office of the President, the development of the first National Intellectual Property Enforcement Strategy, and the President's recent Executive Order creating two government-wide Intellectual Property Advisory Committees. We look forward to continuing to work with you and others in the Administration on these important issues.

The U.S. Chamber of Commerce's Global Intellectual Property Center (GIPC), representing a broad spectrum of intellectual property-intensive companies, is dedicated to protecting and promoting the ideas and ingenuity that serve as key engines of job creation, competitiveness, and economic growth for the United States.

IP-based industries account for more than \$7.7 trillion of the U.S. gross domestic output, drive 60 percent of U.S. exports, and employ more than 19 million Americans. The GIPC appreciates your Administration's efforts to date to protect U.S. intellectual property and looks forward to continuing to work with your Administration to foster job creation and economic recovery in our most innovative and creative industries by addressing some of the biggest challenges to effective IP protection.

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America's innovation economy faces growing threats from physical counterfeiting and piracy networks that operate both online and in the traditional marketplace. In addition, some foreign governments and their allies are seeking to weaken IP rights and undermine patent, trademark, and copyright protections around the world. In the face of these challenges, the GIPC is committed to working with the Administration to accomplish the following priorities during the coming year:

Expand the Efforts of the U.S. Intellectual Property Enforcement Coordinator (IPEC)

The GIPC strongly supported the creation of an IPEC within the Executive Office of the President to ensure that the nation's IP policy supports American jobs and innovation, while coordinating and streamlining the IP activities of various departments and agencies. In June 2010, the IPEC accomplished one of her key statutory responsibilities by delivering to Congress a first-ever, government-wide, joint strategic plan for intellectual property enforcement. GIPC understands that the IPEC is expected to supplement this ambitious plan in the coming months with a list of recommendations to improve existing federal law. While the GIPC is pleased with the IPEC's work so far, successful implementation of her plan will require a sustained commitment from both the Administration and Congress. We urge the Administration to work with Congress to ensure that the IPEC and all of the federal agencies that play a role in IP protection and enforcement have the resources and IP-dedicated personnel necessary implement to the national strategy.

Preserve a Strong International IP Legal Framework

The GIPC urges your Administration to continue to promote and defend a robust international system of IP rights and norms and oppose any efforts to weaken or expropriate IP rights in rule-setting institutions, whether in the World Intellectual Property Organization (WIPO), the World Trade Organization (WTO), the United Nations Convention on Climate Change (UNFCCC), or other multilateral institutions. It is also important that your Administration remain vigilant against efforts to impose unwarranted exceptions to patent, trademark and copyright protections that would stifle creativity, innovation and the development of new technologies that contribute to global well being and economic growth.

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The U.S. Government should also be a vocal supporter of strong IP rights in regional fora, such as the Asia Pacific Economic Forum (APEC) and the Organization for Economic Co-Operation and Development (OECD). These fora provide important opportunities to engage like-minded partners and emerging powers to ensure the development of strong IPR frameworks that drive innovation.

Advance Trade Agreements with Modern Day IP Provisions

With more than 95 percent of the world's customers living outside of the United States, it is essential that the Administration advance the conclusion and implementation of trade agreements with strong IP provisions that protect and open new markets to America's creations and innovations. The GIPC urges your Administration to work with Congress to secure swift approval of the pending trade agreements with Korea, Colombia and Panama.

In 2011, the Administration must make it a top priority to include the highest IP standards in the Trans-Pacific Partnership Agreement (TPP). It is essential to America's continued competitiveness and export growth that the U.S. demand that TPP include modern IP provisions that are at least as ambitious as those contained in the recently finalized U.S.-Korea Free Trade Agreement (KORUS) agreement.

Fight Intellectual Property Theft Online

The Internet has transformed society, revolutionized the global economy, and deeply affected Americans' daily lives, including how they receive information, purchase goods and services, and access entertainment. Unfortunately, the Internet has also been exploited by some as a platform to engage in IP theft on a massive scale. Digital theft of copyrighted material and the sale of counterfeit goods online not only pose a risk to consumer health and safety, but severely undermine sectors of our economy that have historically provided secure, high-paying jobs. If left unchecked, this growing problem threatens the ability of U.S. companies to increase investment and hire additional workers in industry sectors in which America has been a world leader, and through which the international community has come to know our country.

The GIPC applauds the Administration for initiating "Operation in Our Sites" in 2010 to shut down more than 80 websites engaged in the sale of counterfeit goods and the illegal distribution of copyrighted materials. These efforts led by U.S.

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Immigration and Customs Enforcement (ICE), in cooperation with the Department of Justice Department (DOJ) and the National IPR Coordination Center, are important to fight against counterfeiting and piracy over the Internet that is harming consumers and costing American jobs.

In 2011, GIPC encourages the Administration to continue to use all legal tools currently at its disposal to address rampant IP theft online as well as work with Congress to enact legislation that would provide a transparent process for the Department of Justice to petition a federal court to cut off revenue streams and support services from the most egregious international websites engaged in online piracy and counterfeiting.

Ensure IP Compliance by America's Trading Partners

America's IP-intensive businesses and the workers they employ are facing increasing challenges in bringing their ideas and innovations to the global marketplace due to unpredictable and insufficient IP regimes in a number of foreign markets. China, for example, is a leading source of counterfeit and pirated goods worldwide and is also promoting a web of indigenous innovation policies that undermine foreign intellectual property. The online markets have become overrun with illegal materials via an array of Chinese websites, and the level of software piracy, which includes government and corporate end-user piracy, was 79 percent in 2009. In the pharmaceutical and bio-tech areas, clarifying ambiguous regulations governing regulatory data protection remains a top priority. In India, the government has enacted policies that would undermine economic development in India, cause potential harm to India's consumers and patients, and discriminate against valuable pharmaceutical innovation more broadly. Additionally, the Indian Ministry of Commerce and Industry has recently proposed broad compulsory licensing policies, suggesting that the government expropriate valuable technology rather than pay for it.

The GIPC is also concerned with efforts by individual trading partners to undermine IP rights in numerous ways that are inconsistent with international treaty and trade agreement obligations and the high standards of IP protection that are vital to secure America's competitive advantage and grow and sustain American jobs. The types of IP infringement that U.S. companies are encountering in developed and developing countries include both the blatant undermining of IP rights, such as through the unwarranted issuance of compulsory licenses and the non-enforcement

of anti-piracy laws, to much more nuanced approaches that have similar effects, such as expropriating through regulation the use of trademarks and related IP rights of consumer products. The GIPC urges your Administration to take every appropriate opportunity to address inadequate IP protection and enforcement in foreign markets in order to promote innovation, jobs and the competitiveness of U.S. businesses.

Ensure the U.S. Government Leads by Example

As we work to protect and create American jobs by improving the protection of intellectual property rights globally, the United States must ensure that we are leading by example by setting the highest benchmark for effective enforcement here at home. The IPEC's strategic plan included a number of recommendations that would help achieve that goal. One particularly important recommendation is to issue an Executive Order ensuring the use of legal software by federal agencies and government contractors it pays with federal funds.

Work with Congress on Legislation to Strengthen IP Protection and Enforcement

The GIPC believes the Administration should work with Congress to enact legislation that enables the federal government to better protect Americans' IP rights domestically and abroad. In the 111th Congress, S. 1631, the "Customs Facilitation and Trade Enforcement Reauthorization Act of 2009," was introduced with important provisions to improve the capability of U.S. Customs and Border Protection (CBP) and Immigration Customs Enforcement (ICE) to prevent counterfeit goods from entering the United States. The GIPC strongly supports this legislation and looks forward to continuing to work with the Administration, Congress and interested stakeholders to enact a similar bill into law in 2011.

The GIPC is also eager to work with Congress to enact legislation to improve the U.S. Trade Representative's "Special 301" process by enhancing the tools available to the Administration to engage more effectively with nations that fail to respect or enforce the rights of America's innovators and/or live up to their international IP obligations. This legislation should require an action plan for Priority Watch List countries that includes clear benchmarks to measure performance, and meaningful consequences for nations that fail to perform.

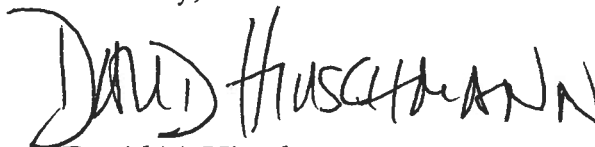
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Finally, the GIPC encourages the Administration to work with Congress to enact legislation that expands the IP attaché program into additional countries abroad. A critical component to America's economic growth and competitiveness is the ability of U.S. businesses to penetrate foreign markets. However, lack of adequate IP protection and enforcement, particularly in developing countries, represents a significant barrier for U.S. companies. IP attachés stationed at American embassies are an important asset in helping address these issues. In addition to assisting U.S. firms, attachés help coordinate IP-related activities of other federal agencies within an embassy, and help provide technical assistance to law enforcement agencies and judges within the host country on IP legal issues. Given the success of the current attaché program, the administration should work with Congress to enact legislation that expands and improves the program.

Conclusion

The challenges facing America and the world today make your continued support for IP rights at home and abroad essential. The GIPC believes the Administration can take a lead role in partnering with Congress, the business community, labor, and other stakeholders to safeguard and create jobs, while protecting consumer health and safety and advancing global development. We look forward to working with you and your Administration to advance these aims.

Sincerely,

A handwritten signature in black ink that reads "DAVID HIRSCHMANN". The signature is written in a cursive, slightly stylized font.

David T. Hirschmann
President and Chief Executive Officer
Global Intellectual Property Center
Senior Vice President
U.S. Chamber of Commerce

cc: The Honorable Joseph R. Biden, Vice President
The Honorable Hillary Rodham Clinton, Secretary of State
The Honorable Eric H. Holder, Jr., Attorney General
The Honorable Gary F. Locke, Secretary of Commerce
The Honorable Janet A. Napolitano, Secretary of Homeland Security
The Honorable Jacob J. Lew, Director of Office of Management and Budget
The Honorable Ronald I. Kirk, United States Trade Representative
The Honorable Victoria A. Espinel, U.S. Intellectual Property Enforcement
Coordinator
The Honorable Robert S. Mueller, III, Director, Federal Bureau of Investigation
The Honorable David Kappos, Director, United States Patent and Trademark
Office
The Honorable Maria Pallante, Acting Register of Copyrights