

U.S. House of Representatives
Committee on the Judiciary
Washington, DC 20515-6216
One Hundred Eleventh Congress
February 18, 2009

The Honorable Barack H. Obama
President of the United States
The White House
Washington, DC 20500

Dear Mr. President:

In the United States, intellectual property (IP) intensive industries provide jobs to tens of millions of Americans, contribute more than \$5 trillion to our gross domestic product, account for more than 50 percent of our exports and are responsible for 40 percent of our economic growth. At a time when our nation is facing profound economic challenges, the federal government cannot afford to delay taking steps that are urgently needed to strengthen these essential economic engines. One of these steps is to implement fully and faithfully the Prioritizing Resources and Organization for Intellectual Property Act (PRO-IP), which was signed into law by President Bush on October 13, 2008.¹

Both the U.S. House of Representatives and the Senate passed the PRO-IP Act (S. 3325) with overwhelming bipartisan support. The House passed H.R. 4279 on May 8, 2008, by a vote of 410-11. The Senate then passed a similar version of PRO-IP (S. 3325) by unanimous consent, and on September 28, 2008, in an equally impressive vote of 381-41, the House passed S. 3325. The passage of this bill by such wide margins demonstrates the depth and the strength of Congress' bipartisan commitment to provide modern tools and resources to the public and private sectors for their use in better protecting IP.

The ultimate purpose of the PRO-IP Act is to prevent and deter IP theft more effectively. When this purpose is thwarted, however, the law is designed to ensure an appropriate level of attention, accountability and action by public and private entities. Central to achieving this objective is the ability of the federal government to better leverage its resources and to ensure that federal, state and local entities that are engaged in the fight against counterfeiting and piracy more effectively coordinate their actions and complement one another's efforts.

The law provides for the appointment of an Intellectual Property Enforcement Coordinator (IPEC) who shall "serve within the Executive Office of the President" (EOP). The IPEC is charged with two principal responsibilities:

¹ Public Law 110-403

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1) chairing the inter-agency IP enforcement committee established under section 301, subsection (b)(3)(A) of the act; and 2) coordinating the development of the Joint Strategic Plan to combat IP theft and assisting in its implementation as provided in section 301, subsections (b)(1)(B) and (C) of the act.

The law does not mandate precisely where the IPEC must be organizationally located within the EOP. But we believe your decision in this regard as well as your decisions in relation to the resources to be provided to the IPEC will prove decisive in determining whether this official will have the ability to execute effectively the statutory duties assigned to the office. Towards this end, we recommend you establish the IPEC as a distinct office within the EOP and direct this new official to report to both the Assistant to the President for Economic Policy and Director of the National Economic Council, as well as the Assistant to the President for National Security Affairs and Director of the National Security Council.

This proposed structure will integrate the IPEC into the two White House offices whose responsibilities most closely correlate to the concerns that motivated us to draft the PRO-IP Act in the first instance. These concerns were also central to Congress' intention in enacting these important new authorities. This approach respects the precedent that has been followed in the placement of other major policy offices within the EOP (such as the Office of Science and Technology Policy, the Council of Economic Advisors, the Council on Environmental Quality, and others) in effective and established structures. Finally, this proposed structure will preserve the integrity and visibility of the new IPEC and help ensure that he or she is able to effectively and accurately represent your perspective before Congress.

The establishment of this position as an integral part of your economic policy team will also reflect the importance IP plays in our economy. And it will empower the IPEC to be an active, when appropriate, participant in the processes, initiatives and activities coordinated by the NEC. Additionally, because the IPEC will be one of the most visible U.S. advocates for policies and actions that both promote IP and strengthen and protect it abroad, it is important for this new position to be integrated into the NSC process. This action will benefit the NSC by ensuring that the IPEC's perspective and experience are taken into account in developing and implementing appropriate U.S. positions on bilateral and multilateral economic and trade concerns. It will have the additional benefits of: 1) ensuring the IPEC is fully informed of and acts consistently with considered NSC positions; 2) elevating the importance of IP enforcement in our dealings with other countries; and 3) facilitating the IPEC's ability to participate at an appropriate level in multilateral and bilateral forums.

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As the authors and architects of the original PRO-IP Act, we stand ready to work with your administration and our colleagues in Congress to ensure these vital new authorities are implemented and resourced as intended. We appreciate your consideration of our recommendations and look forward to engaging in a dialogue if there are questions that relate to either the PRO-IP Act or this letter.

In the event such questions arise, please feel free to contact us or have your staff direct any inquiries to Stacey Dansky, the Chief Copyright Counsel for the majority, at (202) 225-3951, and David Whitney, the Chief Copyright Counsel for the minority, at (202) 225-6906.

Sincerely,



John Conyers, Jr.
Chairman



Lamar Smith
Ranking Member

cc: The Honorable Rahm Emanuel, Chief of Staff
Mr. Phil Schiliro, Assistant to the President for Legislative Affairs