

# ANNUAL INTELLECTUAL PROPERTY REPORT TO CONGRESS

February 2019



UNITED STATES  
INTELLECTUAL PROPERTY ENFORCEMENT COORDINATOR



## **IPEC ANNUAL INTELLECTUAL PROPERTY REPORT TO CONGRESS:**

This report is submitted pursuant to *15 U.S.C. §8114*.

During the past two years, President Trump and his Administration have worked to promote strong intellectual property rights protection and enforcement, both domestically and abroad. As part of an integrated approach, the Trump Administration views our intellectual property strategy, policy and enforcement efforts, together, as key to helping secure the future of our innovative economy and to maintaining our competitive advantage.

The Trump Administration's Annual Intellectual Property Report to Congress, developed by the Office of the U.S. Intellectual Property Enforcement Coordinator, brings together the combined and coordinated efforts of the White House, the Departments of Commerce, Justice, Homeland Security, State, Treasury, Health and Human Services, and Agriculture, the Office of the U.S. Trade Representative, and the U.S. Copyright Office. This report was originally mandated to be submitted by the U.S. Intellectual Property Enforcement Coordinator a decade ago by the Prioritizing Resources and Organization for Intellectual Property Act of 2008, and builds upon that framework to provide an overview of the Trump Administration's intellectual property enforcement strategy and policy efforts. For the United States' approach to intellectual property and innovation policy to be successful, it must continue to be a combined effort that includes all branches of government, the private sector, and our international partners.

The Trump Administration continues to build on past strategic efforts in all areas of intellectual property policy, including patents, copyrights, trademarks and trade secrets, both domestically and abroad. But the Administration also recognizes that for the United States to maintain its future economic competitiveness, we need to think strategically and shift the paradigm to one where we not only place America First, but regard America's inventive and creative capacity as something that we must protect, promote and prioritize.



## UNITED STATES INTELLECTUAL PROPERTY STRATEGY



*“We will safeguard the copyrights, patents, trademarks, trade secrets, and other intellectual property that is so vital to our security and to our prosperity. We will uphold our values, we will defend our workers, and we will protect the innovations, creations, and inventions that power our magnificent country.”*

- President Donald J. Trump<sup>1</sup>

Article I, Section 8, Clause 8 of the Constitution recognizes the fundamental importance of intellectual property and its protection to the United States. Intellectual Property (IP) underpins nearly every aspect of our economy – it supports good paying jobs, it supports the arts, sciences and technology, and it creates a framework that allows new industries and innovations to flourish.

On April 26, 2018, President Trump, became the first President to formally recognize World Intellectual Property Day and proclaimed that “[o]n World Intellectual Property Day, we not only celebrate invention and innovation, but also we recognize how integral intellectual property rights are to our Nation’s economic competitiveness.” For this reason, the President stated that “[o]ur country will no longer turn a blind eye to the theft of American jobs, wealth, and intellectual property through the unfair and unscrupulous economic practices of some foreign actors.”<sup>2</sup>

Under the Trump Administration, the Office of the U.S. Intellectual Property Enforcement Coordinator<sup>3</sup> (IPEC) along with other White House offices, in coordination with executive branch departments and agencies, works to advance pro-growth policies, to promote and protect our great competitive advantage – our nation’s innovative economy.

Our efforts have focused on coordinating and developing the United States’ overall intellectual property enforcement policy and strategy, to promote innovation and creativity, and to ensure effective intellectual property protection and enforcement, domestically and abroad.

The United States’ intellectual property strategy involves a broad range of executive branch agencies and departments to ensure that the government’s efforts are focused and well-coordinated.

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<sup>1</sup> Remarks by the President on Signing a Memorandum on Addressing China’s Laws, Policies, Practices, and Actions Related to Intellectual Property, Innovation, and Technology (August 14, 2017) - <https://www.govinfo.gov/content/pkg/DCPD-201700571/pdf/DCPD-201700571.pdf>

<sup>2</sup> President Trump Proclaims April 26, 2018, as World Intellectual Property Day (April 26, 2018) - <https://www.whitehouse.gov/presidential-actions/president-donald-j-trump-proclaims-april-26-2018-world-intellectual-property-day/>

<sup>3</sup> U.S. Code: Title 15 (Commerce and Trade), Chapter 107 (Protection of Intellectual Property Rights) - 15 U.S.C §8111. The IPEC Office is part of the White House Office of Management and Budget in the Executive Office of the President.



Over the past two years, the Trump Administration has taken significant actions to promote and protect intellectual property.

The Administration's four-part strategic approach includes:

- engagement with our trading partners;
- effective use of all our legal authorities, including our trade tools;
- expanded law enforcement action and cooperation; and
- engagement and partnership with the private sector and other stakeholders.

The United States government is taking a targeted, practical, and comprehensive approach toward addressing intellectual property policy and strategy.<sup>4</sup> The goal is to ensure a level playing field for American innovators and creators, where their innovations and creations are respected and protected, and for systems to be in place that allow American businesses to operate in a free, fair and open marketplace.

To that end, IPEC established the White House Intellectual Property Strategy Group that regularly brings together the National Economic Council (NEC), National Security Council (NSC), Office of Science and Technology Policy (OSTP), Council of Economic Advisors (CEA), Office of the Vice President (OVP), Office of the U.S. Trade Representative (USTR), other relevant White House Offices, and Departments and Agencies. Because intellectual property policy in the international and domestic contexts affects multiple departments and agencies, the White House manages the collaborative policy development process to determine courses of action and make Presidential recommendations to ensure that all views are properly presented and considered.

The Administration's overall efforts involve a multitude of executive branch departments and agencies, that each handle both different and overlapping aspects of the federal government's intellectual property strategy and policy. These efforts include senior officials from the Departments of Commerce, Justice, Treasury, Homeland Security, State, Agriculture, and Health and Human Services, and the U.S. Copyright Office. Additionally by statute, the executive branch has three Presidentially-appointed and Senate confirmed positions focused on IP, which are the Intellectual Property Enforcement Coordinator in the Executive Office of the President; the Undersecretary of Commerce for Intellectual Property and Director of the U.S. Patent and Trademark Office (USPTO) at the Department of Commerce; and the Chief Innovation and Intellectual Property Negotiator at USTR.

Across the Administration, federal departments have vital roles over intellectual property policy and strategy. The Secretary of Commerce leads several agencies that have important intellectual property responsibilities and serves as a leading voice shaping intellectual property policy both in the United States and abroad. Chief among the Commerce Department agencies is the USPTO, with statutory authority to advise "the President, through the Secretary of Commerce,

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<sup>4</sup> This includes implementation, of areas in line with Presidential policies and priorities, of the Joint Strategic Plan, submitted under 15 U.S.C. §8113, for FY2017 to FY2019.



on national and certain international intellectual property issues” and advise “Federal departments and agencies on matters of intellectual property in the United States and intellectual property protection in other countries.” 35 U.S.C. §2(b) (8)-(13). Other Commerce Department agencies that work on intellectual property issues include the International Trade Administration (ITA), the National Telecommunications and Information Administration (NTIA), and the Bureau of Industry and Security (BIS).

The Administration is working to ensure that the federal government’s intellectual property efforts are focused and well-coordinated and that resources are being used effectively and efficiently. As the Administration works to achieve meaningful progress, there are three important questions that should always be considered – What are we doing well? What isn’t working? And what should we be doing?

The Administration has made clear that our intellectual property enforcement policy includes all areas of intellectual property and innovation policy – copyrights, patents, trademarks, and trade secrets – and involves nearly every sector of our economy. Our strategic approach makes clear that our economic prosperity relies upon our leadership in technology and creativity, and we must protect our innovative economy from those who steal intellectual property and unfairly exploit the innovations of free societies.

As the United States government works to advance American economic interests overseas, a significant component of our enforcement and protection efforts includes addressing trade enforcement, market access, competition, digital trade, cybersecurity, and rule of law concerns in the intellectual property space, around the world. American innovators and creators must be able to operate in foreign markets that provide them with clear paths to secure and use their IP. Countries and foreign companies should not be allowed to profit off of the theft or misappropriation of American intellectual property, including, for example, by trade secret theft, IP infringement, piracy, forced technology transfers or localization requirements. Additionally, American brand holders must have full and fair ability to market and sell their products and use their properly registered trademarks across the globe, without undue restrictions. The recently-concluded U.S.-Mexico-Canada Agreement has the strongest and most comprehensive IP standards of any prior U.S. Free Trade Agreement (FTA).

On the domestic front, the Administration will work to ensure that our intellectual property laws are kept up to date, and that they promote American innovation and creativity.

Intellectual property is integral to our nation’s economic competitiveness and the growth of our innovative economy. For instance, copyrights are not only economically important, but a key part of our culture and society. A well-functioning copyright system is essential. The U.S. copyright system is grounded in our Constitution, and built on centuries of extensive jurisprudence, statutes and regulations. During the past year, Congress considered and passed the Orrin G. Hatch–Bob Goodlatte Music Modernization Act, which the President signed into law on October 11, 2018. As President Trump explained, this “landmark legislation” – which had bipartisan sponsorship and was unanimously passed by both the Senate and the House –



“provides critical updates to copyright law to reflect the realities of music licensing in the digital age and to better reward artists and producers for the online use of their music.”<sup>5</sup>

Additionally, a well-functioning patent system is important for our economy. The Administration is working to promote innovation and to ensure that we have strong and reliable patents, that the process for granting them is thorough, yet expeditious, and that any subsequent reviews by the courts or administrative agency is done fairly. The Supreme Court has ruled on a number of significant intellectual property cases in recent years. The Administration is monitoring how those decisions are being implemented by lower courts and executive branch agencies.

The Administration also continues to explore opportunities to engage with stakeholders on existing industry-led voluntary initiatives to protect American intellectual property, and to look at new areas for cooperation.

We are at a defining moment in this new century, and that is why this Administration is advancing pro-growth policies, to protect our continued economic and innovative competitiveness, promote new engines of growth, and prioritize America’s innovative and creative capacity.



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<sup>5</sup> Statement by the President on signing H.R. 1551, the Orrin G. Hatch–Bob Goodlatte Music Modernization Act (October 11, 2018) - <https://www.whitehouse.gov/briefings-statements/statement-by-the-president-7/>