

GLOBAL INTELLECTUAL PROPERTY CENTER

OF THE

UNITED STATES CHAMBER OF COMMERCE

DAVID T. HIRSCHMANN
PRESIDENT AND CHIEF EXECUTIVE OFFICER

1615 H STREET, NW
WASHINGTON, DC 20062-2000
202/463-5609 • 202/955-1152 FAX
david.hirschmann@uschamber.com

February 16, 2010

The President
The White House
Washington, DC 20500

Dear Mr. President:

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. Accordingly, the GIPC looks forward to working with your administration to address our priority issues related to intellectual property (IP) in 2010 that will help advance our shared objectives of job creation and economic recovery.

Today's global IP system is designed to drive creativity and innovation, and advance the spread of knowledge, by protecting creators' and inventors' rights. This system also provides assurance to consumers that the products they use are authentic, safe, and effective. Sound IP policies in the United States and abroad are essential to advancing global economic recovery and creating high-quality American jobs. Currently, IP-based industries account for more than \$5 trillion of the U.S. GDP, account for more than half of our exports, and employ over 18 million Americans.

America's innovation and creation economy, however, faces threats from criminal counterfeiting and piracy networks, as well as from a few foreign governments and special interest groups determined to weaken IP rights and undermine global norms. Some governments want to take America's intellectual property to bolster their own economies and enhance their competitiveness. In the face of these challenges, the GIPC is committed to working with the administration to accomplish the following priorities during the coming year:

Fully Implement the PRO-IP Act (P.L. 110-403)

Among the important core provisions of the PRO-IP Act were those that created the position of the U.S. Intellectual Property Enforcement Coordinator (IPEC) within the Executive Office of the President. The GIPC applauds the administration for appointing Victoria Espinel as the nation's first IPEC. Based on her background and experience, we believe Ms. Espinel is eminently qualified for the important task of ensuring the nation's IP policy supports American jobs and innovation, while coordinating and streamlining the IP activities of various departments and agencies. In 2010, the administration should ensure the IPEC has the requisite authority, budget and staff to successfully carry out her duties.

Chief among those tasks is coordinating the development of a first-ever, government-wide, joint strategic plan for intellectual property. The GIPC sees the development of this national strategy as a unique opportunity to highlight the importance of IP rights, innovation, and creativity, while maximizing the effectiveness and efficiency of federal IP enforcement efforts. As such, we encourage the administration to engage industry and other stakeholders through a vigorous process that develops the most comprehensive and effective strategy possible.

The PRO-IP Act also recognized that criminal enforcement of IP laws should be among the highest priorities of the Department of Justice (DOJ). The Act requires DOJ to activate dedicated resources in support of IP and help fund state and local IP enforcement efforts. DOJ has already taken important steps toward implementing these requirements under the law. The GIPC encourages DOJ to continue building on these efforts and stands ready to support them as they implement these important federal requirements.

Preserve a Strong International IP Legal Framework

The protection of intellectual property rights abroad is also essential to promoting the growth of our IP-intensive industries in particular, and our broader economic competitiveness more generally. It is important that your administration continue to promote and defend a robust international system of IP laws and norms, from protecting these rights in international fora such as the World Intellectual Property Organization, to advancing agreements, such as the U.S.-Korea Free Trade Agreement and Trans-Pacific Strategic Economic Partnership Agreement, with strong IP protection and enforcement provisions.

We also encourage your administration to oppose any efforts—such as those to impose unwarranted exceptions to patent, trademark, and copyright protections—to weaken IP rights in international institutions. For example, we urge you to remain vigilant in future United Nations climate change negotiations to avoid any weakening of IP rights, which are critical to incentivizing investments and creating the innovations needed to address global problems.

Fight Online Counterfeiting and Piracy

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. The Internet has been one of the most important and innovative developments for mankind over the last century, and the prospect of greater access at faster speeds will undoubtedly continue to shape our world in the coming years.

Notwithstanding its many benefits, the emergence of the Internet and new online technologies has also fueled an explosion in IP theft, which not only poses a risk to consumer health and safety, but severely undermines sectors of our economy that have historically provided secure, high-paying jobs. Indeed, the rampant theft of movies, music, books and other online content is threatening the ability of U.S. companies to increase investment and hire additional workers in these industries—sectors in which America has been a world leader, and through which the international community has come to know our country. As such, the GIPC and its members are eager to work with the administration to examine this problem and consider new and creative efforts to fight counterfeiting and piracy in the online environment.

As part of this effort, it is critical that the administration: (1) develop broadband policies and regulations that preserve the right of Internet Service Providers to use reasonable methods and effective tools to prevent the distribution of illicit content; and (2) encourage an active and robust partnership between content owners and ISPs to prevent the use of proprietary networks for the transmission of infringing materials. Your support for similar policies with other governments will also be important as they develop their broadband policies.

Conclude a Comprehensive Anti-Counterfeiting Trade Agreement

The GIPC is encouraged by the administration's efforts to conclude a substantive and enforceable Anti-Counterfeiting Trade Agreement (ACTA). To ensure success, the agreement must be ambitious and comprehensive, build on existing international rules and norms, specifically the TRIPS agreement, and complement the IP provisions of current and pending free trade agreements, such as those with Oman and Korea. ACTA must include robust provisions to confront IP theft in both the physical and online environments, and incorporate effective and credible enforcement mechanisms to ensure success.

Some have raised concerns about the transparency of the ACTA negotiations. While the GIPC also supports maximum transparency, this criticism risks shifting the focus away from the substance of the agreement and its value to our economy. The GIPC firmly believes that concluding an agreement in 2010 will help protect American jobs and stimulate the economy. Therefore, while bearing in mind the practical limitations involved in the negotiation of any agreement, we encourage the administration to continue to make every effort to increase transparency to ensure this issue is not used as a justification for delay. Furthermore, we urge the administration to ensure that Congress continues to be fully briefed on the ACTA negotiations and why concluding this agreement is in the country's best interests.

Advance Key IP Issues in Specific Countries

The GIPC remains concerned about a number of IP issues in a few key countries that are harming America's competitiveness and economic growth. For example, India's patent laws prevent many critical medicines from being patented, thereby discouraging the development of important new treatments and cures. Similarly, China's inadequate laws and systems governing regulatory data protection and patent linkage create an obstacle to innovation and a threat to rights holders. Internet piracy in and from China is also doing great harm to America's creative industries. A concerted effort to address internet piracy, including preventing deep-linking to infringing files, and removing illegal content from or shutting down sites that host or provide access to infringing materials, would go a long way to addressing this problem.

The GIPC is also concerned about actions by some countries to undermine trademark rights in ways that are inconsistent with their international treaty obligations, such as

by introducing “plain packaging” legislation that would eliminate the use of well-known trademarks on tobacco products. At the same time, we also encourage your administration to strengthen cooperation with key trading partners to promote shared IP priorities and address all of these issues. In particular, we welcome efforts to enhance U.S.-European Union cooperation on IP matters, and believe that such cooperation at the highest levels is essential to our economic growth.

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 July 2009, the “Customs Facilitation and Trade Enforcement Reauthorization Act of 2009,” S. 1631, was introduced with important provisions to improve the capability of U.S. Customs and Border Protection and Immigration Customs Enforcement to prevent counterfeit goods from entering the United States. The GIPC strongly supports this legislation and hopes to see it enacted into law in 2010.

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.

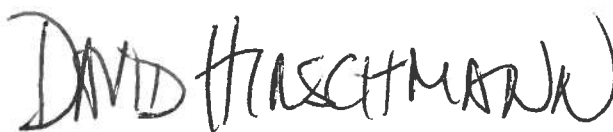
Finally, we encourage the administration to work with Congress to enact legislation that expands the IP attaché program into additional countries abroad. These attachés – stationed at American embassies in selected countries – are an important asset in helping address IP protection and enforcement issues. Given the success of the current attaché program, the GIPC urges Congress and the administration to work together this year to enact attaché provisions passed by the House in 2009 as part of H.R. 2410, the Foreign Relations Authorization Act.

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Conclusion

The administration has much to do in the coming year, especially with an economy trying to regain its footing. 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.

Respectfully,

A handwritten signature in black ink, reading "DAVID HIRSCHMANN". The signature is written in a cursive, slightly stylized font. The first name "DAVID" is in all caps and the last name "HIRSCHMANN" is in all caps. The signature is positioned above the printed name and title.

David Hirschmann
President and Chief Executive Officer
Global Intellectual Property Center

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 Rahm I. Emanuel, White House Chief of Staff
The Honorable Peter R. Orszag, Director of Office of Management and Budget
The Honorable Ronald 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