

November 13, 2018

Mr. Vishal Amin
United States Intellectual Property Enforcement Coordinator
Office of Management and Budget
725 17th Street, NW
Washington, D.C. 20503
Via Regulations.gov

Re: Request of the U.S. Intellectual Property Enforcement Coordinator for Public Comments: Development of the Joint Strategic Plan on Intellectual Property Enforcement, 83 Fed. Reg. 46522 (September 13, 2018).

Dear Mr. Amin:

The International AntiCounterfeiting Coalition, Inc. (“IACC”) is pleased to provide the attached comments in response to your request for public input concerning the forthcoming Joint Strategic Plan on Intellectual Property Enforcement for Fiscal Years 2020 – 2022 (“JSP”). We welcome the opportunity to share our experience in shaping U.S. Government priorities in this area of vital importance to American businesses, consumers, and the economy overall.

As a preliminary matter, we’d like to commend our partners in IP protection and enforcement throughout the U.S. government. Theirs is a monumental task, and their efforts day-in and day-out are deserving of praise. From U.S. Customs and Border Protection’s frontline personnel in over 300 ports across the nation, to the officers at Homeland Security Investigations (“HSI”) and special agents of the Federal Bureau of Investigations (“FBI”) who build cases within and beyond our borders, to the prosecutors at the Department of Justice (“DOJ”), and countless others at the Department of Commerce, United States Patent and Trademark Office (“USPTO”), State Department and elsewhere who work to advance the protection of intellectual property rights; the IACC has been consistently impressed with the dedication and support provided by our

public sector colleagues. We welcome the opportunity to continue working with you in developing and implementing the forthcoming Joint Strategic Plan.

Founded in 1979, the IACC is the world's oldest and largest organization representing exclusively the interests of companies concerned with trademark counterfeiting and copyright piracy. Our members consist of over 200 corporations, trade associations, and professional firms. Our brand and copyright owner members represent a broad cross-section of industries, and include many of the world's best-known companies in the apparel, automotive, consumer goods, entertainment, pharmaceutical, and other product sectors. The IACC is committed to working with government and industry partners in the United States and elsewhere, to strengthen IP protection by encouraging improvements in the law and the allocation of greater political priority and resources, as well as by raising awareness regarding the enormous—and growing—harm caused by IP violations.

Pursuant to the IPEC's Request for Public Comments, this submission is organized along the lines of the Administration's four-part strategic approach to promote and protect intellectual property, highlighting industry priorities in the following areas: Engagement with our trading partners; Effective use of all our legal authorities, including trade tools; Expanded law enforcement action and cooperation; and Engagement and partnership with the private sector and other stakeholders.

In preface to those specific areas of strategic concern, we wish to highlight some overarching industry priorities that apply broadly to our comments. Though I'm sure that it will come as no surprise, the evolution of the distribution models for counterfeit and pirated goods over the past decade have drastically increased the importance of rights-holders' intellectual property enforcement efforts in the realm of e-commerce. The U.S. government's approach to IP protection and enforcement must likewise evolve to account for this changing landscape. We've seen a drastic shift in the manner by which counterfeit goods produced abroad are reaching American consumers, as evidenced by U.S. Customs and Border Protection's annual seizure statistics¹, and further borne out by rights-holders' own enforcement experiences. The rise of e-commerce, and consumers' increasing level of comfort with purchasing all manner of goods from unknown third-parties, has afforded ever greater opportunities for counterfeiters to sell their illicit wares. Increasingly, those criminals are seeking to exploit legitimate service providers and platforms to facilitate their illegal businesses. And as made clear from a report published by the Government

¹ See, "Intellectual Property Rights Seizure Statistics for Fiscal Year 2017," <https://www.cbp.gov/sites/default/files/assets/documents/2018-Apr/ipr-seizure-stats-fy2017.pdf>.

Accountability Office earlier this year, even major platforms that garner a high-level of consumer trust have been impacted.²

Despite the challenges faced by rights-holders in the increasingly important online marketplace, these changing business models also offer significant opportunities to substantially enhance IP protection, and in the process provide greater protection to U.S. consumers and to legitimate American businesses. In order to do so, the Executive Branch agencies tasked with IP enforcement must leverage those tools currently available, while also taking advantage of the ever-growing amounts of data available to them, and finding new and creative approaches to working with their partners in the private sector. The next iteration of the Joint Strategic Plan should insist upon a comprehensive review of agencies' existing practices and procedures with an eye towards modernization, collaboration, and increased efficiency given this changing landscape. We welcome the opportunity to participate in this process, and are available at your convenience to discuss further any of the issues raised herein.

Engagement with Our Trading Partners

Bilateral and Multi-lateral Trade Agreements

From everyday consumer goods that make our lives easier, computing and communications technologies that increase business productivity, breakthroughs in medicine that save and improve the quality of our lives, or the music, movies, games, books, and the arts that enrich our culture; intellectual property underlies them all. Broadly speaking, the U.S. economy rests upon a foundation of IP; as such, strong protection and enforcement of trademarks, copyright, patents, and trade secrets remains a vital consideration in our engagement with international trading partners. American manufacturers and creators of all kinds have developed a global reputation for quality, and despite growing competition, the goods and services that they provide remain in high demand throughout the world. But that competition should take place on a level playing field. Too often, U.S. producers are hindered by market access barriers and local protectionism intended to tip the scales in favor of other countries' own domestic producers. Inadequate protection of IP rights and failures to enforce the protections that do exist continue to expose intellectual property owners to unfair competition in the

² See, "Intellectual Property: Agencies Can Improve Efforts to Address Risks Posed by Changing Counterfeit Markets," <https://www.gao.gov/assets/690/689713.pdf>.

global marketplace as others seek a free-ride on American rights-holders' investments, expertise, and reputation.

The IACC has been pleased with the Administration's and U.S. Trade Representative's emphasis on IPR-related concerns in its efforts to update our existing trade agreements, including the U.S.-Mexico-Canada Agreement ("USMCA"). As it moves forward with negotiations with other key trading partners including the United Kingdom, the European Union, and Japan, we strongly urge the Administration to keep intellectual property and digital trade at the forefront. The global rules governing trade have been outpaced in recent decades by concurrent developments in technology and logistics, and agreements such as these offer perhaps a once in a generation opportunity to modernize and revitalize the framework for international trade in the decades to come.

Special 301

The IACC participates annually in the U.S. Trade Representative's Special 301 review, seeking to highlight a broad range of issues faced by rights-holders in jurisdictions around the world.³ We view the Special 301 process as a valuable tool for providing relevant information regarding rights-holders' priority concerns – particularly in the case of smaller markets and trading partners – and in helping to set the U.S. government's agenda for international engagement. The interagency process led by USTR allows for a thoughtful and deliberate approach, leveraging expertise from across the Executive Branch.

We strongly support USTR's expansion of the process in recent years to incorporate a public hearing in conjunction with the submission of written comments; doing so provides additional transparency and encourages more open dialogue between stakeholders. Historically, many nations have criticized the Special 301 process as simply an exercise in "naming and shaming." We've been pleased though by efforts of the U.S. government to leverage the Special 301 report as an engagement tool, using it, for example, in the development of action plans for those countries identified on the Watchlist or Priority Watchlist, and to provide a clear roadmap and appropriate metrics for gauging countries' improvements (or lack thereof) on IP concerns. Those action plans, and such follow-on work – whether via capacity building efforts, fostering information exchange and sharing expertise of the public and private sector, or other means – are a vital component to maintaining the effectiveness of the Special 301 process.

³ Our most recent submission, from February, 2018, is available at: https://www.iacc.org/downloads/key-issues/2018_IACC_Special_301_Report_Submission.pdf, and includes comments regarding specific concerns of rights-holders in 36 countries.

Global Capacity Building and Assistance in International Markets

Many of the challenges faced by U.S.-based IP owners in global markets are tied to two underlying issues: a lack of government resources and expertise for IP protection and enforcement in the local marketplace, and – particularly in the case of SMEs – companies’ own lack of expertise or in-house resources to aid them in navigating those markets. The U.S. government has helped to address those deficiencies through a number of programs, and IACC members have consistently singled-out three for plaudits: the USPTO’s IP Attaché program, the Department of Justice’s IPLEC program, and the USPTO’s Global IP Academy. We strongly support the continued funding of, and where appropriate, expansion of these programs.

The IP Attaché program has operated for a number of years, placing USPTO personnel with substantial IP expertise in U.S. embassies and consulates around the world, providing assistance to rights-holders seeking to protect their rights abroad, while also working with foreign governments in their regions of coverage to raise awareness and expertise on a variety of important IP concerns. The attaches have provided vital service to U.S. businesses as a liaison to communicate relevant information in a timely manner and to raise priority concerns with foreign governments that might otherwise go unaddressed. Similarly, the DOJ’s Intellectual Property Law Enforcement Coordinators, provide regional coverage from U.S. consular facilities to assist rights-holders with criminal enforcement matters, helping IP owners to work more efficiently with international law enforcement and prosecutors.

The IACC and its members also regularly participate in training programs developed and hosted by the USPTO’s Global IP Academy, affording them the opportunity to meet with and educate prosecutors and judges from around the world about key IP enforcement priorities. The United States has, undoubtedly, a more robust IP regime than most; but these programs, and others like them, are vital to increasing the level of expertise among our trading partners. As such, we strongly support the U.S. government’s continued efforts in this area.

Over the past few years, the IACC has greatly expanded its own work with international government partners in law enforcement and customs enforcement. We’ve conducted a number of programs under the auspices of our Latin America Training Program to provide product authentication and enforcement guidance in jurisdictions throughout Central and South America and the Caribbean. Just last month in Orlando, we hosted our second Latin America Regional Brand Protection Summit, in collaboration with UL and INTERPOL, bringing together representatives from over two dozen countries throughout the region to discuss common concerns and best practices for cross-border collaboration on IP enforcement. Similarly, the IACC annually co-sponsors large-scale

events with INTERPOL and with EUROPOL to promote international cooperation on IP enforcement. We've been greatly pleased by the support offered by U.S. government agencies in these efforts – in Orlando, we were happy to welcome high-level keynote speakers from U.S. Customs & Border Protection, Homeland Security Investigations, the Federal Bureau of Investigation, and the IPEC. Past events have also included participation by USPTO attaches and DOJ IPLECs. Such broad participation by U.S. agencies tasked with IP protection, and particularly among agency leadership, sends a clear message to our trading partners that intellectual property protection is a priority for the U.S. government, and should be for theirs as well.

Withdrawal from Universal Postal Union

As noted above, the global rules governing trade have been greatly outpaced in recent decades by concurrent developments in technology and logistics. Nowhere is this more evident than in the volume of counterfeit imports seen entering the U.S. market via small package consignments. For several years, U.S. Customs and Border Protection has highlighted the increase of IP-related seizures through express delivery services and international mail. Without question, a major factor behind the dramatic rise in counterfeit mail imports is the shift towards a direct-to-consumer distribution model that has accompanied the growth in e-commerce. And a major reason that counterfeiting operations based in China (and elsewhere) are able to ship their illicit wares to U.S. consumers so cheaply – oftentimes for less than the cost of shipping a comparable product domestically from a U.S.-based facility – is the failure of the Universal Postal Union to modernize its rates, effectively subsidizing the sale of counterfeits into the United States and other major consumer markets. We have seen repeatedly the willingness of counterfeiters to exploit legitimate services to facilitate their illegitimate ends.

While we do not view it as a permanent or complete solution to rights-holders' concerns regarding trafficking via international mail, we support the recent announcements regarding the U.S. government's intention to withdraw from the Universal Postal Union until such time that these concerns have been addressed, and we look forward to working with the Administration to find a path forward that both facilitates international trade and ensures that the mail system will not be further exploited by criminal enterprises abroad. We're hopeful that the Administration's actions will offer an opportunity to address broader issues related to the abuse of the international postal system for illicit purposes.

Effective Use of All Our Legal Authorities, Including Trade Tools

Implementation of the Trade Facilitation and Trade Enforcement Act of 2015

Exchange of Information Regarding Counterfeit Imports

Intellectual property enforcement in the United States has been historically grounded in terms of public-private partnership, this is particularly the case with regard to border enforcement. That partnership, in turn, has rested largely on the ability of rights-holders and their counterparts in government to effectively share information about current trends, known bad-actors, and relevant industry- and brand-specific intelligence that enabled the respective parties to effectively collaborate on the enforcement of IP for the benefit of rights-holders, consumers, and the government. Regrettably, we have seen these cooperative efforts greatly hindered in recent years.

In 2015, we wrote at length in comments to the then-IPEC regarding rights-holders' concerns related to U.S. Customs and Border Protection's interpretation of its existing legal authority to share relevant information with rights-holders in carrying out its IP enforcement mission.⁴ For many years, CBP has maintained that its authority to share information with, and to seek assistance from rights-holders was limited by the Trade Secrets Act⁵, and by its need to maintain the confidentiality of what it considers to be proprietary information belonging to importers. Congress addressed those concerns with provisions enacted as part of the National Defense Authorization Act for Fiscal Year 2012⁶, providing statutory authorization for the sort of free exchange of information between CBP and rights-holders that had been the norm prior to CBP's current interpretation of the Trade Secrets Act. Unfortunately, that 2012 enactment was followed by a final rulemaking in 2015 that did little to remove the impediments to sharing information with the private sector. Congress spoke to the issue again – and more

⁴ See, IACC Comments dated October 16, 2015, https://www.iacc.org/IACC%20Comments_2016%20IPEC%20Joint%20Strategic%20Plan_FINAL.pdf.

⁵ 18 U.S.C. 1905.

⁶ National Defense Authorization Act for Fiscal Year 2012, Sec. 818(g)(1), stating, "IN GENERAL.—If United States Customs and Border Protection suspects a product of being imported in violation of section 42 of the Lanham Act, and subject to any applicable bonding requirements, the Secretary of the Treasury may share information appearing on, and unredacted samples of, products and their packaging and labels, or photographs of such products, packaging, and labels, with the rightholders of the trademarks suspected of being copied or simulated for purposes of determining whether the products are prohibited from importation pursuant to such section.

explicitly – in the Trade Facilitation and Trade Enforcement Act of 2015.⁷ Nearly three years after that law’s enactment however, CBP has yet to publish or adopt new regulations that would promote the more efficient sharing of intelligence with rights-holders, and the effective provision of assistance in turn. Though we’ve been told that those regulations are forthcoming, we’ve been offered little insight into how CBP plans to implement its authority.

Rights-holders raised similar concerns with regard to new procedures developed by CBP approximately four years ago, in response to the considerable increase in express delivery and international mail as a vector for the trafficking of counterfeit goods into the United States. The agency’s pilot program to implement procedures for “Simplified Enforcement for Express Consignment,” developed at the recommendation of CBP’s Commercial Operations Advisory Committee (“COAC”) Trade Enforcement & Revenue Collection Subcommittee, allowed for an expedited process to permit the abandonment of suspected counterfeit imports with the consent of the importer and/or ultimate consignee. While laudable in its goal of increasing the number of express consignment shipments removed from the stream of commerce, rights-holders consistently raised concerns about the program’s implementation – specifically, with regard to its failure to capture or report information related to abandoned shipments in a manner comparable to that called for when goods were seized via CBP’s traditional, formal detention and seizure process.⁸ CBP has asserted that it is legally prohibited from sharing information related to the abandoned shipments with rights-holders because the existing statutory and regulatory authority for sharing information about such shipments, e.g., the exporter’s name and address, extends only to imports that have been formally detained or seized. We strongly disagree with CBP’s position, particularly in light of the authority provided by the Administration’s Executive Order 13785 of March 31, 2017 (which likewise remains to be implemented).⁹

While the underlying goals of the voluntary abandonment program were certainly laudable, we believe that any substantial revision to the agency’s IP enforcement procedures demands the opportunity for meaningful input by stakeholders in the rights-holder community. Though the pilot program has been concluded, the abandonment

⁷ See, Trade Facilitation and Trade Enforcement Act of 2015, Public Law No: 114-125 (2016).

⁸ See, e.g., 19 CFR 133.21.

⁹ Unofficial reports indicate that the abandonment procedures may have been used in upwards of 25% of the most recent year’s IP-related interdictions by CBP. Absent the collection and sharing of relevant shipping data related to those consignments, rights-holders have raised significant concerns regarding the long-term impact of such an approach on their ability to effectively investigate and pursue civil enforcement against counterfeiting operations.

process has reportedly been incorporated by CBP as a permanent addition to its arsenal of enforcement tools; this, despite the fact that little information has been made available regarding the pilot's operation or of the metrics used by CBP to gauge its effectiveness, that no regulations regarding the framework for its use have been published, and again, despite the lack of opportunity for rights-holders to provide meaningful input into its design or implementation. This lack of transparency is particularly troubling.

We would welcome the opportunity, moving forward, to work more closely with CBP in undertaking a comprehensive review of its interdiction process. It is without question that the commercial shipping environment has changed drastically in recent years, and more efficient procedures are essential to addressing the new reality with which we're faced. The robust exchange of information between CBP and rights-holders should be a cornerstone of these efforts. Likewise, the involvement of other relevant third-parties whose legitimate services may be exploited for illegitimate purposes should be considered. As part of the forthcoming Joint Strategic Plan, we would welcome the development of an industry working group with broad participation from both rights-holders and the trade community and a clear mandate to address this urgent need.

Exchange of Information Related to the Importation of Circumvention Devices

Another provision of the 2016 Trade Facilitation and Trade Enforcement Act deserving of special mention is Section 303 of that law, related to Customs' provision of information related to seizures of circumvention devices. The provision was intended to resolve a long-standing deficiency in regard to CBP's authority to provide information to parties – most notably, the entertainment software sector – harmed by the illicit importation of circumvention devices. Piracy in that sector remains largely reliant upon the availability of circumvention devices that enable end-users to bypass copyright owners' digital rights management tools which control access to the software. Until the enactment of the TFTEA in 2016 however, the statutes authorizing the disclosure of information regarding seizures of goods pursuant to copyright and trademark violations remained silent on comparable violations related to the importation of circumvention devices. As such, rights-holders were deprived of valuable information that could be leveraged in their anti-piracy investigations and civil enforcement actions. To date however, no regulations have been published to provide the necessary framework for reporting such seizure-related information to the relevant rights-holders.

Some rights-holders have also raised concerns that the long-awaited grant of authority may be undercut by the abandonment process described above, as imports of circumvention devices are unlikely to be excluded from that expedited process (assuming

the application of similar thresholds for that procedure going forward, as were included in the pilot operation).

Implementation of “Know Your Customer” Regulations

A final provision of the TFTEA, strongly supported by the IACC, Section 116 of the law mandated the implementation of regulations to ensure that customs brokers “know their customer.” While prior regulations required brokers to obtain a “valid power of attorney,” they failed to provide clear guidance as to what constitutes a “valid power of attorney.” Customs brokers can and should play an important role in both the facilitation of legitimate trade and enforcement against illicit imports. Given their direct relationship with parties seeking to bring goods into the country, it is appropriate to expect that they abide by minimum standards of practice to ensure that prospective importers are in fact who they claim to be. Section 116’s direction that the Secretary establish such minimum procedures however remains unimplemented; this should be remedied as quickly as possible.

Strong Rules for Oversight Related to Federal Acquisitions

Earlier this year, the IACC filed comments in response to a Request for Information published by the General Services Administration (“GSA”) related to ongoing efforts to establish a program to procure commercial products through commercial e-commerce portals, pursuant to Section 846 of the National Defense Authorization Act for Fiscal Year 2018. Those comments are summarized herein.

While the IACC is cognizant of the desire to take advantage of the e-commerce landscape’s cost efficiencies and diverse suppliers, we would also caution against such a shift in federal acquisitions without fully accounting for the risks associated with sourcing goods from online sellers and absent a robust vetting process. In recent years, the IACC has worked extensively on issues within the realm of online commerce, leading the development of voluntary collaborative programs with the payments sector and with major e-commerce platforms. Despite such efforts to address the sale of counterfeits in e-commerce, the online marketplace remains an attractive target for sellers of fake goods. As a result, consumers – whether individuals, or government agencies – must be educated about risks online, including threats to data security, product safety, and others.

In January, the Government Accountability Office issued a report¹⁰ concerning an investigation it conducted into third-party sellers on major e-commerce platforms. It found 20 out of the 47 items it purchased to be counterfeit, including small electronics that may pose risks of electrocution, fire, and related injuries or property damage. Other items purchased were found to contain unacceptably high levels of toxic chemicals such as lead. The government has a duty to protect its employees from exposure to such dangers as they carry out their jobs; it also has a duty to protect against the expenditure of taxpayers' funds to line the pockets of criminals.

Rights-holders and e-commerce platforms continue to explore ways in which we can work together to ensure that consumers can be confident that the goods they buy online are authentic and safe. Among the areas that GSA, and the government more broadly, may be interested in looking into are: industry-practices for onboarding of merchants (including verification of merchants' identities, and the sourcing of the goods they offer for sale); practices related to identifying and removing prohibited items and disciplining those who violate platform rules or applicable laws; practices related to warehousing of third-party goods; and appropriate policies for sharing information related to violations.

Expanded Law Enforcement Action and Cooperation

Engagement of, and Support for, State and Local Law Enforcement

Effective enforcement against counterfeiting and piracy demands a multi-pronged, holistic approach, leveraging the available resources and expertise of both the public and private sectors at the federal, state, and local levels. The IACC has long sought to enhance the capabilities and expertise of law enforcement at each level by offering training opportunities for police agencies around the United States, and by supporting similar programs offered by the U.S. government. Historically, we've seen a great willingness on the part of state and local agencies to take a more active role in the enforcement of IP, while sometimes lacking the necessary resources or expertise. We strongly believe that federal assistance programs to fill those gaps in training, and to provide necessary financial and materiel resources – for example, funding to support dedicated IP enforcement units – can have a force-multiplying effect that will substantially improve the environment for legitimate businesses and rights-holders, while also reducing the burden on federal law enforcement and prosecutors.

¹⁰ See, note 2, supra.

Making efficient use of the resources that are available is similarly important. The IACC has taken an active role in fostering the development of multi-agency task forces at the state and local levels, and has been a strong supporter of the work undertaken by the National IPR Coordination Center. We were pleased to see the IPR Center’s authorization included as part of the TFTEA, and encourage Congress to ensure that the Center receives the financial and personnel resources necessary to carry out its important work. We would further encourage the Administration and its constituent agencies to explore opportunities to work with their counterparts at the state and local level as an essential component to expanding IP enforcement capacity across the United States.

Engagement and Partnership with the Private Sector and Other Stakeholders

Support for Voluntary Collaborative Programs

One of the most important roles that the government can play is to provide a suitable environment and support for private-sector stakeholders to develop voluntary solutions to address counterfeiting and piracy. The IACC has been a leader in the development of such voluntary collaborative initiatives across a variety of industry sectors, and has benefited from the government’s exercise of its authority to convene stakeholders and its encouragement to find common ground to advance the common good.

In January 2012, the IACC launched its RogueBlock® program, in partnership with the world’s largest credit card, payments, and money transfer companies. That program was the end-result of discussions of industry best practices that began at the behest of the first IPEC. The RogueBlock program has brought to bear the resources and expertise of rights-holders and their counterparts in the financial sector to identify and remediate bad actors seeking to exploit the legitimate services that the latter provide. By coordinating the sharing of intelligence, the various parties have been able to connect the dots between anonymous web presences and real-world merchant accounts, significantly diminishing the ability of counterfeiters and pirates to profit from sales online. To date, the collaborative efforts in this “follow the money” approach have resulted in the termination of over 5,500 merchant accounts, impacting an estimated 200,000 websites. Because the program is based upon terms of service that are applicable worldwide, RogueBlock has a global reach that is not hampered by traditional jurisdictional limitations. Moreover, its design allows for a more efficient approach to enforcement and a more persistent impact, while avoiding the unnecessary duplication of efforts and many of the delays inherent in traditional enforcement mechanisms.

The IACC has pursued a similar collaborative approach with regard to online marketplaces, beginning with the development of its IACC MarketSafe® program and its subsequent expansion, and more recently with the development of a pilot program with Amazon. The former initiative was launched in 2014, in cooperation with the Alibaba Group, with an aim toward fostering increased engagement between rights-holders and Alibaba's Taobao and TMall platforms. During the initial phase of its operation, the IACC MarketSafe Program resulted in the removal of over 300,000 listings, and led to more than 7,000 sellers of counterfeits being permanently banned from the platforms. Equally important, the program facilitated substantive dialogue to resolve issues and explore the effectiveness of policies and practices to enhance IP protection on the platforms. The MarketSafe Expansion Program, commencing in 2017, broadened that effort to include Alibaba's other platforms, while also enabling greater participation by rights-holders – including non-IACC members. Importantly, the expanded program has been offered to rights-holders at no cost, facilitating participation by SMEs that might otherwise lack the enforcement resources available to larger companies. More recently, the IACC launched a new pilot initiative, seeking to enhance cooperation on anti-counterfeiting efforts between rights-holders and Amazon. Based on the initial results and feedback from participants, that pilot program has been extended for an additional calendar quarter.

We have seen significant progress when working in cooperation with willing partners who are committed to addressing the sale of counterfeit and pirated goods both on- and offline. Much work remains to be done however, and the government's efforts to foster similar collaborative partnerships among private sector stakeholders would be greatly appreciated.

Public Awareness

As noted in our 2015 submission in support of the prior Joint Strategic Plan, the problem of counterfeiting in the United States is one of both supply and demand. While customs and law enforcement officials work tirelessly to keep illicit goods out of the consumer marketplace, the incredible volume of counterfeits flowing into the United States renders any solution to the problem impractical if our focus is on detection and enforcement alone. Significantly decreasing the demand for counterfeit goods is a vital component to any long-term solution.

While consumer awareness of the dangers associated with counterfeiting and piracy has certainly increased over the course of the past decade, that increased awareness appears to have had no significant discernible effect on the market for counterfeit goods. We believe this is likely due to the fact that most consumers have only a tenuous grasp of the broader implications of buying counterfeits (e.g., they continue to view counterfeiting as

an essentially “victimless” crime that only impacts large, faceless corporations), as well as the fact that consumers are often simply unable to determine whether goods are authentic or counterfeit (this is particularly so in the e-commerce environment).

The IACC, and countless other industry groups have developed consumer education campaigns in an attempt to increase public awareness, but this remains an area in which the government can play a vital role. We’ve been pleased with the efforts of U.S. Customs & Border Protection, the USPTO, and the Department of State in seeking to fill this need, and strongly encourage the federal government to continue and expand resources available for such agency programs. In 2017, CBP launched its “Truth Behind Counterfeits” campaign, with targeted messaging to travelers at six international airports and online¹¹, highlighting a variety of harms associated with counterfeiting. Similarly, the Patent and Trademark Office is currently seeking to leverage the efforts of consumers themselves with its, “Consumers Combat Counterfeits” video contest. The State Department’s Office of Intellectual Property, meanwhile, has been exploring ways that information developed by rights-holders and the government might be leveraged to better communicate the health and safety concerns posed by counterfeits. This latter issue is all the more relevant in light of the GAO report published earlier this year which described the prevalence of counterfeit goods on major e-commerce platforms, while also uncovering that a high percentage of those goods failed to pass baseline consumer safety testing.

A traditional problem seen in the development of consumer awareness messaging, especially in the case of messaging related to health and safety, has been the reliance upon anecdotal information. Such examples are easily dismissed by consumers, who would often prefer to think, “It won’t happen to me.” The IACC would be supportive of a more data-driven approach that leverages the efforts and expertise of several agencies working in coordination to provide an empirical basis for such consumer messaging. In furtherance of the work currently being undertaken by the State Department, for example, CBP could provide samples of verified counterfeit goods (following seizures) for testing by the Consumer Product Safety Commission, which in turn could provide a solid empirical basis to highlight the risks posed to consumers by those products.

We cannot simply arrest and seize our way out of this problem; the scale of counterfeiting and piracy is simply too great. Consumer education, however, can play an important role in decreasing the demand for counterfeit goods, and the Administration should provide sufficient resources to the relevant agencies and other bodies tasked with IP protection

¹¹ See, “The Truth Behind Counterfeits,” available at <https://www.cbp.gov/FakeGoodsRealDangers>.

and enforcement to ensure that outreach and education can remain a priority moving forward. The IPEC should take a leadership role in ensuring that such efforts are well-coordinated and without unnecessary duplication.

Donation Assistance Program

The IACC was pleased to see U.S. Customs and Border Protection's rollout of its Donations Acceptance Program (DAP), created pursuant to provisions of the Trade Facilitation and Trade Enforcement Act of 2015. As implemented, the DAP provides broad authority for direct collaboration between CBP and the private sector that has, and will continue to, enable IP owners and other relevant stakeholders to provide a wide array of technical and materiel support, as well as the necessary educational and training assistance to make use of the former. Some IACC members have already established partnerships with CBP pursuant to the relatively new program, and have reported positive results from their engagements. The IACC recently met with program staff to explore additional opportunities for cooperation, and we are optimistic that the DAP will give rise to significant dividends as it moves forward with expanded partnerships. The DAP is a clear example of the Administration's recognition of the need for strong and creative approaches to partnering with industry in carrying out the government's IP enforcement goals. We look forward to this continued engagement, and would welcome similar projects undertaken by our other partners throughout the Executive Branch.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Travis D. Johnson', written in a cursive style.

Travis D. Johnson
Vice President – Legislative Affairs, Senior Counsel