

Security and Prosperity Partnership of North America (SPP)

Intellectual Property Action Strategy

Strategy

The overall goal of the Security and Prosperity Partnership's Intellectual Property (IP) dialogue is for Canada, Mexico and the United States to agree on a work plan that will constitute a strategy for combating piracy and counterfeiting, in order to contribute to the overall objective of Promoting Growth, Competitiveness, and Quality of Life. As part of the "Fake Free North America" initiative, our governments have identified three key areas of cooperative effort to improve IP protection and enforcement: Detect and Deter Trade in Pirated and Counterfeit Goods; Public Awareness and Outreach to Our Business Communities; and Measuring Piracy and Counterfeiting. Industry representatives from the three countries have committed to concrete actions to support the implementation of this Strategy. Each element includes goals and specific recommendations for trilateral public-private cooperation selected to achieve the stated goal.

Detect and Deter Trade in Pirated and Counterfeit Goods. This element focuses on developing best practices for overall enforcement, creating enforcement networks to enhance information sharing and enforcement operations, and improving border enforcement. Through enhanced cooperation in these areas, our goals are to reduce the movement of pirated and counterfeit goods into and between Canada, Mexico and the United States and develop a network of enforcement professionals to collaborate on transnational IP crime.

Public Awareness and Outreach to Our Business Communities. In this element, our goal is to encourage the private sector to take a greater role in preventing IP infringement and assisting enforcement actions by building private sector awareness of the enforcement systems in Canada, Mexico and the United States. We are also committed to working with the private sector to develop an initiative to reduce demand for pirated and counterfeit goods through IP public awareness campaigns for the public and other relevant constituencies.

Measuring Piracy and Counterfeiting. In this element, the governments agree to facilitate the ongoing OECD Counterfeiting Study, develop measurements to assess progress, and refine and apply the results in developing domestic and regional enforcement strategies in North America, including targeting specific high-risk product sectors.

This Action Strategy delivers on the first of four IPR related recommendations from the North American Competitiveness Council and elements within this Strategy aim to deliver on the remaining three.

Action Items

Detect and Deter Trade in Pirated and Counterfeit Goods

Best Practices for Enforcement

Goal: Develop best practices enforcement guidelines and begin implementation in the near term in a manner consistent with each county's current civil, criminal and administrative systems.

Best Practices for Enforcement: The goal is to reach consensus on a set of enforcement best practices each government would support in order to increase and strengthen IP enforcement. This proposal sets out civil, criminal and administrative legislation and enforcement practices to effectively combat trade in pirated and counterfeit goods. For example, the best practices could include judicial and administrative measures to facilitate actions to inspect, suspend, seize and destroy goods and equipment used in cases of import, export and transshipment of infringing goods. The guidelines could also provide policy direction for promoting deterrent criminal enforcement actions and transparent judicial proceedings.

Actions:

- Canada, Mexico and the United States, will engage in a continuous dialogue to discuss and periodically identify best civil, criminal and administrative enforcement measures that each government will support.
- During future work, the three governments and relevant stakeholders will further explore the issue of digital piracy.
- Industry has also agreed to work with the three governments to suggest positive policy reforms.

Lead Agency: US: United States Trade Representative (USTR), Canada: Department of Foreign Affairs and International Trade (DFAIT), Mexico: Mexican Institute of Industrial Property (IMPI), Attorney's General office (PGR), Administration General of Customs (AGA), and National Copyright Institute (INDAUTOT)

Enforcement Network

Goal: Develop network of enforcement professionals among the governments of Canada, Mexico and the United States to jointly collaborate on enforcement against transnational counterfeiting and piracy. Focus will be on operations (e.g., border enforcement, transnational counterfeiting and piracy) and/or on specific sectors based upon industry collaboration and input.

Enforcement Network: Canada, Mexico and the United States have agreed to identify points of contact that are authorized to conduct domestic criminal investigations and prosecutions of counterfeiting and piracy. These points of contact will have expertise in the area of intellectual property crimes and ability to assist in cooperative international investigations, including facilitating, in appropriate cases, the involvement of multiple law enforcement agencies at different levels of government.

- Collaboration between Canadian and U.S. authorities in Operation Site Down can be used as a best practices model for future enforcement efforts.

Actions:

- Canada, Mexico and the United States will establish and maintain an updated list of points of contact of enforcement professionals.
- Enforcement officials from the three governments will also pursue additional opportunities to share information and intelligence regarding piracy and counterfeiting within North America.

Lead Agency: US: Department of Justice (DOJ), Immigration and Customs Enforcement (ICE), Canada: Royal Canadian Mounted Police (RCMP), Mexico: Prosecutor General (PGR), and AGA

Cooperation to Enhance IPR Enforcement

Goal: Consistent and sustained efforts by Canada, Mexico and the United States against counterfeiting and piracy originating in third countries.

Collaboration and coordination regarding third countries: Coordinate efforts on a common enforcement message, sent through diplomatic channels. Efforts will be undertaken jointly where beneficial.

Collaboration on the ground in third countries: Mexican, Canadian and U.S. Embassy staff will make every effort to coordinate efforts in third countries to more effectively tackle issues that arise, and collaborate on working with the local business community to raise the awareness of IPR issues and industry best practices.

Actions:

- As outlined above, Canada, Mexico and the United States will seek opportunities to work with other countries to address the challenges of global counterfeiting and piracy. Efforts could include exploring partnerships with like-minded countries and building upon other multilateral initiatives for third country cooperation, such as in WTO, APEC, and the OECD.
- Officials will periodically exchange information on activities and events related to this element.
- Industry has committed to support and cooperate with government preparations for IP enforcement initiatives involving third countries.
- Industry has also agreed to continue to work with Canada, Mexico and the United States to coordinate effective roundtables and training programs focused on IP enforcement in third countries.

Lead Agency: US: USTR and Department of State, Canada: DFAIT, Mexico: PGR, AGA, IMPI and INDAUTOR

Border Enforcement/Detection/Transnational Investigations

Goal: A reduction of the importation, exportation and in transit movement of pirated and counterfeit goods into and between Canada, Mexico and the United States. Exchange of information about suspect shipments and tools/techniques for targeting such shipments will facilitate efforts. When counterfeit/pirated goods are encountered, develop joint cooperation between Canada, Mexico, the United States and other governments in the enforcement transnational IP investigations.

Customs Techniques for IPR Detection and Risk Management: The exchange of new innovative border enforcement techniques used to supplement current customs IPR efforts presents an opportunity for the three countries to consider comparable programs within their own systems. Exchange of ideas in this venue will encompass the sharing of best practices, lessons learned and relevant operational programs with the goal of strengthening targeting and expanding approaches to IPR enforcement.

- The U.S. Customs and Border Protection (CBP) IPR Risk Model based on statistical techniques, and post-entry verifications to help identify and determine the scope of a company's IPR violations, are examples of such techniques.

Exchange of best practices for training of Customs officers: It is vital to ensure officers charged with responsibility for border enforcement have access to well-developed training programs. The three countries will exchange practices for training customs/border enforcement officers on IPR. The goal of this exchange is to identify best practices for developing expertise and skill in IPR border enforcement. It will encompass sharing of training methods, experiences and lessons learned.

Exchange of information regarding suspect shipments: Canada, Mexico and the United States will exchange information on these suspect shipments to facilitate enforcement by the destination country's authorities, where feasible and appropriate.

Enforcement of suspect shipments: Canada, Mexico and the United States will solicit cooperation from other governments when counterfeit/pirated goods are encountered in an effort to fully investigate/prosecute international counterfeit trafficking organizations. The SPP will promote anti-counterfeiting/anti-piracy goals, joint bi/tri and multi-lateral investigations directed at identifying the source of the counterfeit/pirated merchandise production, as well as the financial activities that result from its manufacture and distribution. The SPP through its efforts will extend Border Enforcement/Detection to fully develop joint transnational investigations to stem the flow of counterfeit/pirated products as well as joining with other like-minded nations to dismantle all aspects of the counterfeiting/pirating organizations.

Actions:

- Enforcement authorities in Canada, Mexico and the United States will develop a point-of-contact list to facilitate communication and information exchange on issues such as border enforcement techniques, best practices for training, notifying and exchanging information between enforcement agencies regarding suspect shipments and disseminating information for transnational investigations, where feasible and appropriate.

- Canada, Mexico and the United States will consider sharing experience and information on border enforcement recordation databases, as well as access to them where feasible and appropriate, to facilitate identification of pirated and counterfeit goods.
- Industry has committed to support these efforts by providing training for enforcement officials, manuals (in French, Spanish and English) designed to assist enforcement officials in detecting counterfeit products and information based upon their own IP protection efforts.
- Finally, industry has also agreed to create a rights holders point of contact list that can be provided to law enforcement officials to support prompt enforcement actions.

Lead Agency: US: Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE), Canada: Canada Border Services Agency (CBSA) and RCMP, Mexico: PGR, AGA and IMPI

Public Awareness and Outreach to Our Domestic Stakeholders

Goal: Develop a public-private initiative to tackle piracy and counterfeiting. Encourage the private sector to take a greater role in preventing counterfeiting and piracy and assisting enforcement actions by building private sector awareness of the enforcement systems in Canada, Mexico and the United States. Reduce demand for pirated and counterfeit goods through public awareness campaigns.

Enhancing Domestic Industry/Government Cooperation and Information-Sharing: Establishing domestic joint industry/government anti-counterfeiting and anti-piracy groups will provide regular access to government, create opportunities to share information and work together to fight against IP theft, and help ensure that overall efforts are complementary. Governments could also partner with private sector organizations to publish online comprehensive information on securing and protecting IP rights to assist domestic rights holders in navigating their own government's resources, and to provide greater transparency for foreign rights holders. The United States www.StopFakes.gov is a possible example.

Actions:

- The United States, Canada and Mexico will identify and share existing resources that educate companies and individuals about how to obtain and enforce their IP in Canada, Mexico and the United States (e.g., www.stopfakes.gov and IPR toolkits).
- Industry has undertaken to develop a code of ethics for online transactions in French, Spanish and English and develop a database which includes information and studies related to the economic contribution of IP and the dangers of counterfeiting and piracy.

Lead Agency: US: Commerce/Patent and Trademark Office (PTO) and International Trade Administration (ITA), Canada: DFAIT, Mexico: IMPI, PGR and INDA

International Business Coalitions: Raising public-private sector collaboration to new levels by engagement by private sector stakeholders directly with their international counterparts will ensure a comprehensive cross-border solution to addressing the trade in fakes. The U.S. Coalition Against Counterfeiting and Piracy, the Canadian Anti-Counterfeiting Network and the Alianza contra la Pirateria will work together to conduct joint seminars on best practices and enforcement efforts among other activities. Regular communication with governments will also enhance this process.

- Consider whether to focus on particular sectors, and if so, each government could propose a sector (e.g., autos, foodstuffs, entertainment, software, pharmaceuticals, etc.) for roundtables in which there is mutual interest.
- Encourage our companies to share more information and intelligence with relevant authorities, lodge well-developed and defined requests for assistance, follow-through on complaints and support measures taken.
- Consider participation in private-sector training being offered related to IP and whether to invite the private sector to participate in government-sponsored training. Where appropriate, the three governments will also look for opportunities to cooperate on training and technical assistance.

Public Awareness Campaigns: Sharing information on public awareness campaigns will help all three countries project a consistent message on piracy and counterfeiting.

- One recent example of such a campaign was undertaken by the Royal Canadian Mounted Police, in collaboration with the Canadian Anti-Counterfeiting Coalition, a private stakeholders group.

Actions:

- Canada, Mexico, and the United States will name a contact and regularly update each other on public awareness campaigns already underway and share materials created for them for use as appropriate.
- The three countries agree that they will examine the feasibility of additional resources for public awareness and/or explore opportunities to work more closely with the private sector to run additional campaigns in line with SPP priorities.
- Where available, the three governments and industry have committed to share materials designed for teachers and other educational authorities for use in educating students on the importance of intellectual property rights and the importance of innovation and creativity.
- The governments will also collaborate on public awareness campaigns to educate the general public on how to acquire intellectual property rights as well as the dangers of piracy and counterfeiting.

Lead Agency: U.S.: Commerce/PTO, Canada: DFAIT, Mexico: IMPI, PGR and INDAUTOR

Global Enforcement Actions Website: Mexico, Canada and the United States will participate in the development of a website that will post press articles and information about intellectual property enforcement actions that take place across the world. The website will track the intellectual property information currently posted about U.S. cases at www.cybercrime.gov and disseminate information about successful criminal investigations and prosecutions of intellectual property cases to the public, affected segments of the intellectual property industry and other government agencies. Posting this information is an effective, low cost means to spread the deterrent message that the government vigorously pursues intellectual property crimes. We expect that the site will also post links to any law enforcement website from the originating country as a source for further information.

Actions:

Canada, Mexico, and the United States will discuss the logistics involved in implementing this system in order to accommodate current practices in each country and will consider coordination with other similar proposed initiatives in other international forums, such as the G8 and APEC.

Lead Agency: US: DOJ, Canada: RCMP; Mexico: IMPI, PGR, AGA and INDAUTOR

Measuring Piracy and Counterfeiting

Goal: Develop relevant information regarding the effects of piracy and counterfeiting to better understand the scope of the problem, inform development and implementation of public and public-private strategies, and to measure progress.

Government and industry stakeholders recognize that measuring the scope and magnitude of counterfeiting and piracy is challenging. There are no single indicators or methodologies that can be used to fully assess the problem. Different indicators for different sectors and populations may be needed to better understand the problem and be able to set baselines to measure progress in the future.

Actions:

- Canada, Mexico and the United States will develop baseline data from which to measure progress in reducing the scope and level of piracy and counterfeiting in the future;
- Examine ways to highlight the positive effect of IPRs on each country's economy;
- Examine polls and studies commissioned by industry and academia;
- Encourage collaboration between governments, industry and academia;

Lead Agency: US: Commerce/ITA/PTO, Canada: DFAIT ; Mexico: IMPI, PGR, AGA and INDAUTOR

Goal: Facilitate the ongoing OECD study by providing data and considering other necessary and available resources, recognizing that current, independent and reliable information on the scope and effect of counterfeiting and piracy will help in communicating the extent of the problem to consumers and governments world wide and in focusing governmental action. Generate accurate information

regarding the scope and effects of piracy and counterfeiting to inform development and implementation of public and public-private strategies for combating IP theft.

The OECD's Committee on Industry and Business Environment has been charged with updating the OECD's 1998 study on the economic impact of counterfeiting. We continue to firmly believe that a successful study would help us all - OECD and non-OECD countries – to make the case for strong action against intellectual property theft. Canada, the United States and Mexico could work to coordinate their contribution to the OECD study based on the North American and SPP context, including by providing information and offering guidance to the OECD with respect to methodology and indicators.

Action: The United States, Canada and Mexico will:

- Encourage industry and other stakeholders to provide data to the OECD so the current study will be as comprehensive and useful as possible. Governments will share comments they provide on interim drafts.
- Assess results of the OECD study to determine their implications for targeted efforts in the SPP IPR context.
- Explore opportunities to enhance the strategic value of the study results based on the SPP experience through further examination of region-specific and sector-specific piracy and counterfeiting.

Lead Agency: US: Commerce/ITA, Canada: DFAIT, Mexico: IMPI and PGR

Next Steps

The United States, Canada and Mexico will regularly review this action strategy in the SPP IPR working group and consider additional action items as appropriate. Governments agreed that regular meetings together with representatives of the private sector will be an important feature in helping to achieve progress and will consider holding informal meetings in various formats. To that end, such meetings will rotate among the three countries; the U.S. and Mexico have each hosted working group meetings and private sector consultations. Canada will host the next SPP IPR working group meeting.

August 2007