

INTELLECTUAL PROPERTY GUIDELINES FOR THE 116TH CONGRESS

An Open Letter



AMERICAN COMMITMENT



Allvanza



AMERICANS FOR TAX REFORM



THE BUCKEYE INSTITUTE



Digital Liberty

DISCOVERY INSTITUTE



Members of the 116th Congress:

It is an exciting time for America, particularly in the knowledge-based economy. American entrepreneurship, ingenuity and creativity lead the world, and we believe that intellectual property (IP) rights are a key ingredient to American competitiveness.

The undersigned organizations represent millions of Americans through both state and national advocacy or engage in rigorous research and educational work on intellectual property rights. We would like to share with you the following information and guidelines that our respective organizations look to when we consider our strong support for intellectual property rights.

Intellectual Property Rights Are Grounded in the Constitution

The Founding Fathers recognized the importance of IP in Article 1, Section 8 of the Constitution: "To promote the Progress of Science and useful Arts, by securing for limited times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries."

This clause, articulated by the founders, is rooted in the notion that the best way to encourage creation and dissemination of new inventions and creative works to the benefit of both the public good and individual liberty is to recognize one's right to his or her intellectual property.

Intellectual Property Rights Are a Fundamental Property Right Deserving the Same Respect as Physical Property

James Madison elaborated on this provision of the Constitution in Federalist Paper #43: With regard to intellectual property, as with all property rights protected in the common law, "[t]he public good fully coincides ... with the claims of individuals."

IP rights are not regulations—they are property rights that, when combined with the freedom to contract, facilitate markets. Governmental limitations and restrictions on property rights cause friction in the function of markets. IP owners have the same right as all property owners to sell or license their products and services in the market free of express or implicit price controls so they can recoup their investments and support their professional careers.

No one would say that the right to keep people out of your home is a regulation: it is a right of ownership. It is the limitations on the use and sale of one's property that are regulations and controls.

Intellectual Property Rights Promote Free Speech and Expression

Strong IP rights go hand-in-hand with free speech as creators vigorously defend their ability to create works of their choosing, free from censorship.

By affording innovators and creators the ability to support themselves, IP rights promote free expression unencumbered by government.

Intellectual Property Rights are Vital to Job Growth & Economic Competitiveness

IP rights create jobs and fuel economic growth, turning intangible assets into exclusive property that can be traded in the marketplace.

The most recent report on IP-related jobs in the U.S., by the Department of Commerce and the Patent and Trademark Office,¹ found that in 2014, direct employment in the most IP intensive industries accounted for 27.9 million jobs. Indirect activities associated with those industries provided an additional 17.6 million jobs, for a total of 45.5 million jobs, or 30 percent of all jobs in the economy.

The report also found that IP-intensive industries added \$6.6 trillion to the value of GDP in 2014, equal to 38.2 percent of total GDP. In a knowledge-

based global economy, America's ability to remain a world leader in creativity and innovation depends on strong protection of IP.

Intellectual Property Rights Must Be Protected Internationally Through Effective IP Provisions in Trade Agreements

Far too many foreign governments look the other way when it comes to the theft of IP. State-sanctioned IP theft from other countries costs the U.S. economy more than \$320 billion annually.²

By harmonizing and strengthening IP standards, Congress and the Administration incentivize creativity, innovation and investment here at home. Moreover, strong IP provisions in trade agreements allow local innovative and creative industries to flourish. Therefore, strong IP protections are integral to all trade agreement negotiations.

Intellectual Property Rights Are Integral to Consumer Protection and National Security

IP rights protect consumers by enabling them to make educated choices about the safety, reliability, and effectiveness of their purchases. In 2017, consumer electronics and parts represented 12 percent of total counterfeit goods seized, presenting a dangerous risk to American consumers if those products malfunction.³

Illegal intangible goods are also dangerous. One-third of websites offering stolen movies and television shows were found to contain malware, putting consumers at risk of identity theft, credit card fraud, and more.⁴

The ease of doing business online has also led to an increase in the number of sites selling illegal products. In 2017, the U.S. coordinated actions with 26 other countries to take down a record 1.21 million domain names and shutdown 2.2 million links to online marketplaces that sold counterfeit and copyright infringing products.⁵

The protection of IP rights is also vital to national security to prevent counterfeit parts, which compromise the reliability of weapons systems and the safety of military personnel, from entering the defense supply chain. A May 21, 2012 Senate Armed Services Committee report revealed 1,800 cases of counterfeiting, involving more than 1 million parts.⁶

Intellectual Property Rights Must Be Respected and Protected on the Internet

The internet is an incredible platform for innovation, creativity and commerce enabling widespread distribution of ideas and information. However, IP theft online is a persistent and growing problem. For example, between 2001 and 2015, U.S. recorded music revenues fell from \$14 billion to \$7 billion—losses largely attributed to online theft.⁷

Protecting IP and internet freedom are both critically important and complementary—they are not mutually exclusive. A truly free internet, like any truly free community, is one where people can engage in legitimate activities safely, and where bad actors are held accountable.

Voluntary Initiatives to Address Intellectual Property Theft Are Positive

Good faith actors in the internet ecosystem should engage in private sector, voluntary initiatives to address illegal conduct. These voluntary efforts can empower consumers to make educated decisions about their online activities and encourage creativity, innovation, investment and jobs.

We encourage you to consider these guidelines as you review and discuss existing laws and regulations governing IP. The Founding Fathers understood that by protecting the proprietary rights of artists, authors, entrepreneurs, innovators, and inventors, they were promoting the greater public welfare. The continued protection of these fundamental rights is essential to American innovation and competitiveness.

1 <https://www.uspto.gov/sites/default/files/documents/IPandtheUSEconomySept2016.pdf>

2 http://www.ipcommission.org/report/IP_Commission_Report_052213.pdf

3 <https://www.cbp.gov/sites/default/files/assets/documents/2018-Apr/ipr-seizure-stats-fy2017.pdf>

4 <https://media.gractions.com/314A5A5A9ABBBBC5E3BD824CF47C46EF4B9D3A76/0f03d298-aedf-49a5-84dc-9bf6a27d91ff.pdf>

5 <https://www.ice.gov/news/releases/over-million-websites-seized-global-operation>

6 <http://www.armed-services.senate.gov/press-releases/senate-armed-services-committee-releases-report-on-counterfeit-electronic-parts>

7 <https://www.digitalmusicnews.com/2016/05/02/how-google-killed-the-music-industry-in-3-easy-diagrams/music-industry-revenues-2015-mic>

Sincerely,

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