



## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

[Docket No. PTO-C-2023-0006]

### Future Strategies in Anticounterfeiting and Antipiracy

**AGENCY:** United States Patent and Trademark Office, Department of Commerce.

**ACTION:** Notice of public roundtable and request for comments.

**SUMMARY:** The United States Patent and Trademark Office (USPTO) is working across government and with the private sector to address counterfeiting and piracy. As part of that effort, the USPTO wants to learn what interested parties are observing and seeks their insights into anticounterfeiting and antipiracy strategies. In particular, the USPTO requests information on current anticounterfeiting and antipiracy strategies that have proven effective, as well as ideas for future strategies. To facilitate discussion among members of the public regarding the future of anticounterfeiting and antipiracy, the USPTO will host a roundtable on the topics listed in this notice on October 3. Any additional roundtables will be announced through the Federal Register.

**DATES:** Comments must be received by 11:59 p.m. ET on [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** You may submit comments and responses to the questions below by one of the following methods:

(1) **Electronic Submissions:** Submit all electronic comments via the Federal e-

Rulemaking Portal at [www.regulations.gov](https://www.regulations.gov) (at the homepage, enter “PTO-C-2023-0006” in the “Search” box, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments). The materials in the docket will not be edited to remove identifying or contact information, and the USPTO cautions against including any information in an electronic submission that the submitter does not

want publicly disclosed. Attachments to electronic comments will be accepted only in Microsoft Word, Microsoft Excel, or Adobe PDF formats. Comments containing references to studies, research, and other empirical data that are not widely published should include copies of the referenced materials. Please do not submit additional materials. If you want to submit a comment with confidential business information that you do not wish to be made public, please submit the comment as a written/paper submission in the manner detailed below.

- (2) **Written/Paper Submissions:** Send all written/paper submissions to: United States Patent and Trademark Office, Mail Stop OPIA, P.O. Box 1450, Alexandria, VA 22314. Submission packaging should clearly indicate that materials are responsive to Docket No. PTO-C-2023-0006, Office of Policy and International Affairs, Comment Request; Future Strategies in Anticounterfeiting and Antipiracy.

**Submissions of Confidential Business Information:** Any submissions containing confidential business information must be delivered in a sealed envelope marked “confidential treatment requested” to the address listed above. Submitters should provide an index listing the document(s) or information they would like the USPTO to withhold. The index should include information such as numbers used to identify the relevant document(s) or information, document title(s) and description(s), and relevant page numbers and/or section numbers within a document. Submitters should provide a statement explaining their grounds for objecting to the disclosure of the information to the public. The USPTO also requests that submitters of confidential business information include a non-confidential version (either redacted or summarized) of those confidential submissions that will be available for public viewing and posted on [www.regulations.gov](http://www.regulations.gov). In the event that the submitter cannot provide a non-confidential version of its submission, the USPTO requests that the submitter post a notice in the docket stating that it has provided the USPTO with

confidential business information. Should a submitter fail to docket a non-confidential version of its submission or post a notice that confidential business information has been provided, the USPTO will note the receipt of the submission on the docket with the submitter's organization or name (to the degree permitted by law) and the date of submission.

### **Instructions for and Information on the Public Roundtable Event**

At least one roundtable event will be held at the USPTO, Madison Building, 600 Dulany Street, Alexandria, VA 22314, and there will be an option to attend virtually. The roundtable will begin at 10 a.m. and end at 1 p.m. Registration for both in-person and virtual options is available, along with the agenda, at [www.uspto.gov/about-us/events/roundtable-future-strategies-anticounterfeiting-and-antipiracy](http://www.uspto.gov/about-us/events/roundtable-future-strategies-anticounterfeiting-and-antipiracy). Although the USPTO strongly encourages advance registration, attendees may also register at the door one hour prior to the beginning of the roundtable. The platform for attending virtually will be made available at [www.uspto.gov/about-us/events/roundtable-future-strategies-anticounterfeiting-and-antipiracy](http://www.uspto.gov/about-us/events/roundtable-future-strategies-anticounterfeiting-and-antipiracy) along with instructions for attending.

The roundtable will be physically accessible to people with disabilities. Individuals requiring accommodation, such as sign language interpretation or other ancillary aids, should communicate their needs at least seven business days prior to the roundtable to Velica Dunn in the USPTO's Office of Policy and International Affairs at 571-272-9300, at [Velica.Dunn@uspto.gov](mailto:Velica.Dunn@uspto.gov), or by postal mail addressed to: Mail Stop OPIA, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22314-1450, ATTN: Velica Dunn. Attendees joining in person should arrive at least a half hour prior to the start of the roundtable and must present valid government-issued photo identification upon arrival.

**FOR FURTHER INFORMATION CONTACT:** Ameen Imam, USPTO, Office of Policy and International Affairs, at 571-272-9300 or [ameen.imam@uspto.gov](mailto:ameen.imam@uspto.gov). Please

direct media inquiries to the USPTO's Office of the Chief Communications Officer at 571-272-8400.

#### **SUPPLEMENTARY INFORMATION:**

Counterfeited and pirated products are readily available to U.S. consumers through all forms of commerce, including physical markets, ecommerce, and social media sites.

Many of these counterfeited and pirated products endanger public health and safety, as well as national security. The scope of counterfeited and pirated products seeking entry into the U.S. market is significant. For instance, in fiscal year (FY) 2021, U.S. Customs and Border Protection made over 27,000 seizures with an estimated manufacturer's suggested retail price of over \$3.3 billion, which represents an increase of 152% over the previous fiscal year. *See* U.S. Customs and Border Protection, "FY 2021 IPR [Intellectual Property Rights] Seizure Statistics," available at [www.cbp.gov/document/annual-report/fy-2021-ipr-seizure-statistics](http://www.cbp.gov/document/annual-report/fy-2021-ipr-seizure-statistics). The trade in counterfeited and pirated products also negatively impacts American innovation and erodes the competitiveness of U.S.

manufacturers and workers. For example, digital video piracy conservatively causes lost domestic revenues of at least \$29.2 billion and as much as \$71.0 billion annually.

Furthermore, digital video piracy not only causes lost revenues to the content industry, but also "results in losses to the U.S. economy of between 230,000 and 560,000 jobs and between \$47.5 billion and \$115.3 billion in reduced gross domestic product (GDP) each year." *See* U.S. Chamber of Commerce, "Quick Take: Your Primer on Digital Piracy and Its Impact on the U.S. Economy," available at [www.uschamber.com/intellectual-property/quick-take-your-primer-digital-piracy-and-its-impact-the-us-economy](http://www.uschamber.com/intellectual-property/quick-take-your-primer-digital-piracy-and-its-impact-the-us-economy).

The COVID-19 pandemic has provided fertile ground for an increase in the sale and distribution of counterfeited, especially those that are health-related. For example, U.S. Customs and Border Protection seized 35 million counterfeit face masks in FY 2021. It is estimated that the trade in counterfeited and pirated goods has risen steadily in recent

years and stands at 3.3% of global trade. *See* Organization for Economic Cooperation and Development iLibrary, “Trends in Trade in Counterfeit and Pirated Goods,” available at [www.oecd-ilibrary.org/trade/trends-in-trade-in-counterfeit-and-pirated-goods\\_g2g9f533-en](http://www.oecd-ilibrary.org/trade/trends-in-trade-in-counterfeit-and-pirated-goods_g2g9f533-en). The USPTO has worked to address the issue of counterfeiting and piracy through various efforts, including its Intellectual Property Attaché Program, its public awareness programs, and technical assistance provided to trade partners. Through these efforts, the USPTO has observed that counterfeiters and those trading in counterfeited and pirated goods continually evolve their methods to evade detection so they can expand the flow of dangerous products. Rights holders, online platforms, physical markets, and all other stakeholders in the stream of commerce have also used evolving methods to combat the increasing availability of counterfeited and pirated products made accessible directly to consumers.

The USPTO seeks information from interested parties regarding their observations and insights into the future of anticounterfeiting and antipiracy strategies. In particular, the USPTO requests information from consumers, intellectual property rights holders, online marketplaces and platforms, physical marketplaces, parties who provide goods to the public, consumers, and other private sector stakeholders on the evolution of counterfeiting and piracy in recent years and ways to identify and develop future anticounterfeiting and antipiracy strategies.

## **Request for Information**

The USPTO requests information from all interested parties, including stakeholders, trademark and copyright owners affected by the sale of counterfeited and pirated goods, online and physical sellers and marketplaces, other online platforms, consumers, and other parties engaged in the fight against counterfeited and pirated goods entering the stream of commerce and reaching the hands of consumers.

Respondents may address any, all, or none of the following questions. One should identify, where possible, the question(s) the comments are intended to address.

Respondents may organize their submissions in any manner. Please note that respondents have the opportunity to request that any information contained in a submission be treated as confidential business information and must certify that such information is confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and provided only by mail carrier (Please see the ADDRESSES section above).

The USPTO welcomes all input relevant to future strategies in the fight to prevent counterfeited and pirated goods from entering the stream of commerce and reaching the hands of consumers. In particular, we seek the following information:

1. Please identify current anticounterfeiting and antipiracy strategies and any trends you see in how often these practices are guiding the public's plans for addressing these issues in the future.
2. Please identify the types of harms you have observed from sales of counterfeited and pirated goods.
3. Please indicate how consumers are educated about the harms and dangers that may result from the use and sale of counterfeited or pirated products.

4. Please describe current anticounterfeiting and antipiracy strategies that may be available, identifying which elements have proven successful and those that have not. Your answer should identify the targets of anticounterfeiting and antipiracy efforts, such as ecommerce platforms, physical markets, and social media.
5. Please identify the challenges you anticipate in the ongoing fight to prevent counterfeited and pirated goods from entering the stream of commerce and reaching the hands of consumers. Please add information on how those challenges might be addressed.
6. What patterns and trends have you observed in counterfeiting and piracy during the COVID-19 pandemic? Do you anticipate that these patterns and trends will continue past the pandemic?
7. What patterns and trends have you observed in counterfeiting and piracy due to shifts in the economy? Do you anticipate that these patterns and trends will continue? And if so, what impact will they have on any current and future strategic plans to combat counterfeiting and piracy?
8. Please indicate whether any strategic plans to combat counterfeiting and piracy might include collaboration with private or public parties, and if a strategic plan is not collaborative, please explain why not. If a strategic plan does include collaboration, please describe the anticounterfeiting and antipiracy strategies employed in the collaboration.
9. Are you considering new collaborative efforts to combat counterfeiting and piracy? What factors will affect your decision? How might those future collaborations be comprised?
10. Please identify effective technologies for use in the fight to prevent counterfeited and pirated goods from entering the stream of commerce and reaching the hands of consumers, such as counterfeited product identification devices or advanced

algorithms to secure supply chains and identify counterfeited goods online. Please explain how any anticipated strategies will improve an overall anticounterfeiting and antipiracy strategy.

11. Please describe how online enforcement activities intersect with trademark and copyright laws or procedures. Do online enforcement strategies include employing existing trademark laws to combat online counterfeiting? Do online enforcement strategies use existing copyright laws to combat online piracy? If so, please describe in detail those activities, and provide any suggestions for maximizing these practices.
12. Please describe any fraudulent documentation or materials you have observed in the furtherance of online counterfeiting and piracy activity. For example, after reporting infringements to platforms, have you seen fraudulent materials attached to a counter-notification?
13. Please provide any data you have on counterfeiting and piracy, including any data showing how the activities may adversely or disproportionately affect certain industries or companies.
14. Please share your thoughts on what more the USPTO or government and private parties can do to ensure entities, including under-resourced individuals and small businesses, can readily enforce their intellectual property rights against counterfeited or pirated goods. What other solutions have you seen or can you envision?

**Katherine K. Vidal,**

*Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

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