NATIONAL CENTER FOR POLICY ANALYSIS

The Importance of Intellectual Property Protection to the U.S. Economy

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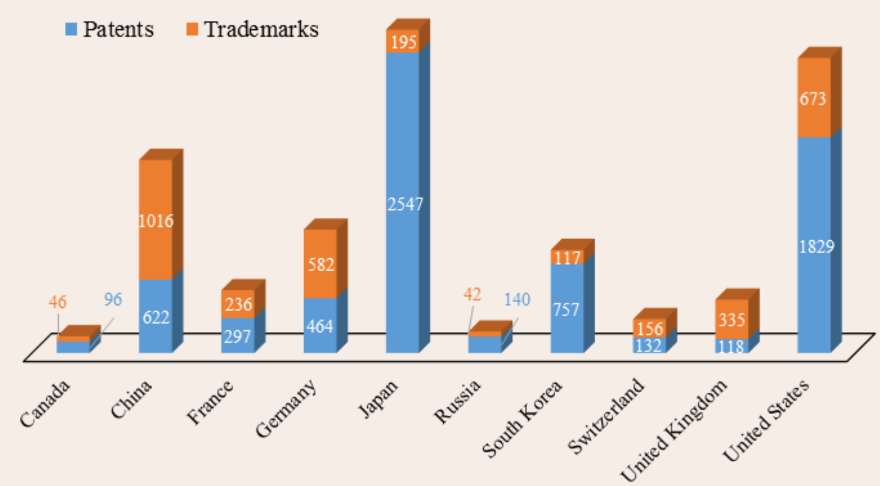
From the telegraph to the telephone to the iPhone, innovation has always been at the heart of the American spirit. In an era of rapidly increasing globalization, protection of the inventions and technologies that fuel much of the U.S. economy is more important than ever.

Intellectual Property Drives U.S. Exports. The World Intellectual Property Organization defines IP as creations of the mind, such as inventions, literary and artistic works, designs, and symbols, names and images used in commerce. This property is protected by each country's patent, copyright, licensing and trademark laws and by international conventions, enabling people to earn recognition or financial benefit from what they invent or create.

The United States is a world leader in innovation, second only to Japan in the number of current trademarks registered and patents granted.[1] [See Figure I.] Studies show that IP-intensive industries actually run a trade surplus — the value of exports less imports — reducing the overall U.S. trade deficit.[2] Further, according to the U.S. Department of Commerce, in 2010, IP-intensive industries accounted for nearly 60 percent of U.S. exports.[3]

2013 Current Patents and Trademarks, Selected Countries
(In Thousands)



Note: Top 10 of 30 largest national economies evaluated by GIPC IP Index.

Source: World Intellectual Property Organization, "Total Patent Grants; Total Count by Applicants Origin 2013," and "Total Trademarks Registered; Total Count by Applicants Origin 2013," July 22, 2015.

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IP Crucial to the U.S. Economy. The Commerce Department estimates that:

- Intellectual property generated nearly $5.06 trillion of U.S. output in 2010, or roughly 35 percent of gross domestic product (GDP).[4]
- IP-intensive industries accounted for 27.1 million jobs and, indirectly, for another 12.9 million.[5]
- All told, IP-intensive industries employed nearly 27.7 percent of all American workers.[6]

Furthermore, wages in IP-intensive industries are on average 42 percent higher than non-IP intensive industries.[7]

Lax IP Enforcement Costs U.S. Economy Billions of Dollars Every Year. Globally, the Organization for Economic Cooperation and Development (OECD) estimates the American economy loses $250 billion annually to IP theft.[8] A report by the National Bureau of Asian Research's Commission on the Theft of American Intellectual Property claims the losses are probably much greater, but are underestimated for two reasons.[9]

First, while some types of IP theft are easy to identify and aggregate, others are not. For instance, the U.S. Department of Homeland Security tracks the total value of counterfeit goods seized at U.S. borders and the software industry measures the value of unauthorized copies. However, estimates of other types of IP losses, such as theft of trade secrets, are not readily available.[10]

"China and India are the biggest violators of intellectual property rights."

Second, companies experiencing losses to IP theft frequently do not report them. Reporting losses can damage companies' reputations and discourage shareholders from investing. Frequently, companies reporting losses are unwilling to identify the source, wary of the accused government's retaliation or the incitement of nationalist consumer disdain that could hurt the position of their brands.[11]

The Biggest Violators. The lack of IP protection and enforcement in China and India (both World Trade Organization members) represents a huge economic loss for the United States from theft and deterred investment in these countries' economies. Access to these large markets for U.S. businesses could be encouraged through consistent and dependable global IP protection.

Of the 30 largest economies, China and India are ranked 29th and 24th (Bottom Tier) by the Global Intellectual Property Center's (GIPC) index of IP enforcement.[12] Both countries are also on the U.S. Trade Representative's (USTR) 2015 "301 Priority Watch List," an annual report that assesses the global state of IP protection and enforcement.[13] It is important to note that, in part, the 301 report uses regulations set forth by the WTO's Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement of 1994 as guidelines.[14] TRIPS was intended to establish minimum standards of protection for the members, as well as rules for enforcement and dispute settlement.[15]

The WTO Does Not Protect IP Effectively. A greater concern than the volume of economic losses that occurs due to IP theft is the ineffectiveness of the TRIPS agreement to curb it. More than 20 years later, it is clear that TRIPS' narrow rules and minimum standards are ineffective, and its inability to enforce IP rights is evident. According to WTO data, the United States filed 17 IP-related complaints during the first six years (1995-2000) under TRIPS; but, since 2001, the United States has filed only one IP-related dispute — a claim against China in 2007.[16]

China's previously mentioned IP enforcement ranking and placement on the USTR's 2015 Priority Watch List comes six years after the WTO ruled against China in the 2007 dispute. The WTO ruled that some of China's laws were not consistent with TRIPS, so China changed its laws.[17] But, until recently, China's government largely failed to enforce its laws, though it has pledged to suppress online counterfeiters and crack down on fake iPhone factories.[18]

Even so, China's recent IP enforcement efforts are not due to WTO or U.S. government pressure, but, instead, the result of actions taken by high-profile retailers. Indeed, a sizable lawsuit by Beats Electronics against several Chinese companies selling unlicensed merchandise and Taylor Swift's introduction of branded clothing to Chinese markets have drawn international attention to counterfeiting.[19]

The United States is seeking to strengthen IP protection outside the purview of the WTO. Improved IP rules have been U.S. objectives for large multilateral trade deals such as the Trans-Pacific Partnership (TPP) and the Transatlantic Trade and Investment Partnership (TTIP). The Anti-Counterfeiting Act (ACTA), signed in 2011, is the highest-standard multilateral agreement ever achieved concerning the enforcement of intellectual property rights; but, with only eight signing countries, its geographic scope is limited.[21]

WTO IP Talks. The WTO Doha round of negotiations that began in 2001 failed in part due to disagreements over IP. The United States and many other developed countries argue that IP rights are a necessary guarantee from developing countries' governments that private investment will be protected, even as companies and institutions transfer technology to those countries. Developing countries counter that strict IP rules unfairly restrict technology transfers and privilege the interests of rich nations over poor ones. However, numerous studies have shown that increasing IP rights protection in developing countries leads to higher levels of Foreign Direct Investment and ultimately economic development.[22] This difference in viewpoints is a principal factor in the lack of progress toward stronger global IP standards.

Conclusion. Innovation is the lifeblood of the U.S. economy, and intellectual property is a large share of exports and a significant portion of the overall economy. As the United States becomes increasingly dependent on the products of innovation, creativity and invention, policies that protect Americans' intellectual property rights overseas should be a priority for the government.

It is time to revive discussions among all the world's players in an effort to raise the standards of IP protection. If the WTO moves toward more robust protection and enforcement standards it would truly level the playing field and contribute substantially to U.S. (and global) economic growth and development.

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Notes

1. World Intellectual Property Organization, "Total Patent Grants; Total Count by Applicants Origin 2013," July 22, 2015; and World Intellectual Property Organization, "Total Trademarks Registered; Total Count by Applicants Origin 2013," July 22, 2015.
2. "Intellectual Property and the U.S. Economy: Industries in Focus," Economics and Statistics Administration and United States Patent and Trademark Office, March 2012. Available at http://www.uspto.gov/sites/default/files/news/publications/IP_Report March_2012.pdf.
3. Ibid.
4. Ibid.
5. Ibid.
6. Ibid.
7. Ibid.
8. "Magnitude of Counterfeiting and Piracy of Tangible Products: An Update," Organization for Economic Cooperation and Development, November 2009. Available at http://www.oecd.org/industry/ind/44088872.pdf.
9. "The IP Commission Report," National Bureau of Asian Research, May 2013. Available at http://www.ipcommission.org/report ip_commission_report_052213.pdf.
10. Ibid.
11. Ibid.
12. "Unlimited Potential: GIPC International IP Index," Global Intellectual Property Center, Third Edition, February 2015.
13. "2015 Special 301 Report," United States Trade Representative, April 2015. Available at http://keionline.org/sites/default files/2015-Special-301-Report-FINAL.pdf.
14. Knowledge Ecology International, "The USTR Special 301 Reports, 1989 to 2014," undated. Available at http://keionline.org ustr/special301.
15. World Trade Organization, "Overview: The TRIPS Agreement," undated. Available at https://www.wto.org/english/tratop_e trips_e/intel2_e.htm.
16. World Trade Organization, "Dispute Settlement: Index of Disputes Issues," undated. Available at https://www.wto.org/english tratop_e/dispu_e/dispu_subjects_index_e.htm#trips.
17. Kaitlin Mara, "WTO Issues Final Decision On US-China Copyright Dispute," Intellectual Property Watch, January 26, 2009. Available at http://www.ip-watch.org/2009/01/26/wto-issues-decision-on-us-china-copyright-dispute/.
18. Gillian Wong, "Chinese Regulator Announces New Crackdown on Online Sales of Fakes," *Wall Street Journal*, June 4, 2015; and BBC News, "Apple 'fake factory' raided in China," July 28, 2015. Available at http://www.bbc.com/news/business-33681929.
19. *Beats Electronics, LLC vs. The Partnerships and Unincorporated Associations Identified On Schedule "A,"* (2014 ND Illinois), Case No. 14-cv-5209, available at https://ia902503.us.archive.org/16/items/gov.uscourts.ilnd.298062/gov.uscourts ilnd.298062.1.0.pdf; and Laurie Burkitt, Alyssa Abkowitz, "Taylor Swift Counters Knockoffs in China," *Wall Street Journal*, July 21, 2015.
20. Office of the United States Trade Representative, "Intellectual Property," undated. Available at https://ustr.gov/issue-areas intellectual-property.
21. Office of the United States Trade Representative, "Anti-Countfeiting Trade Act (ACTA)," undated. Available at https://ustr.gov.
22. Keith E. Maskus, "The Role of Intellectual Property Rights in Encouraging Foreign Direct Investment and Technology Transfer," Prepared for the Conference "Public-Private Initiatives After TRIPS: Designing a Global Agenda" held at Brussels on July 16-19; Edwin Mansfield, "Intellectual property protection, foreign direct investment, and technology transfer," International Finance Corporation, Washington, D.C., Discussion Paper 19, 1994; and Lee Branstetter et al., "Intellectual Property Rights, Imitation, and Foreign Direct Investment: Theory and Evidence," National Bureau of Economic Research, Working Paper No. 13033, April 2007.