

Department of Justice Targets Intellectual Property Crimes as Major Priority

BY E. LAWRENCE BARCELLA, KIRBY D. BEHRE, THOMAS P. O'BRIEN, AND ADAM J. VAN ALSTYNE

The Department of Justice ("DOJ") has taken several steps this year to implement a major policy initiative that targets global intellectual property ("IP") crimes. First, DOJ created a Task Force on Intellectual Property Crimes to coordinate the investigation and prosecution of high-tech IP crimes.¹ Next, DOJ took steps to make the prosecution of IP crimes a cross-border cooperative effort with other countries. For example, in March 2010 the Department of Justice sent IP prosecutors to Asia to conduct seminars with foreign prosecutors regarding obtaining and using electronic evidence in intellectual property cases.²

Finally, DOJ announced this week that fifteen new Assistant United States Attorneys ("AUSAs") and twenty FBI agents will be dedicated exclusively to the prosecution of intellectual property crimes. The 15 new AUSAs will be working from US Attorney's Offices in California, the District of Columbia, Maryland, Massachusetts, Michigan, New Jersey, New York, Pennsylvania, Texas, Virginia and Washington. The FBI agents will be deployed to locations around the country where IP crimes are of particular concern to DOJ, which is in New York, San Francisco, Los Angeles and the District of Columbia.

All of these steps are a part of the government's landmark effort to develop an enhanced intellectual property enforcement strategy. Indeed, the newly created office of the Intellectual Property Enforcement Coordinator, which will oversee the strategy, will be housed within the Executive Office of the President.³

The goal of these efforts is to protect United States intellectual property rights-holders from both domestic and international threats, including protecting critical infrastructure technologies that implicate national security concerns, such as defense technologies.

The IP crimes initiative is another sign of the significance DOJ is placing on the investigation and prosecution of global conduct. DOJ has dramatically increased the number of prosecutions of violations of the Foreign Corrupt Practices Act ("FCPA"), and an increasing number of foreign governments are actively prosecuting those crimes as well. Similarly, DOJ's Antitrust Division's global cartel prosecutions continue to be a major priority. Prosecutions in each of these areas – IP, FCPA and Antitrust – often involve conduct occurring solely outside the U.S.

The government's extraterritorial reach in prosecuting global intellectual property crimes is bolstered by the Economic Espionage Act of 1996, which makes the theft or misappropriation of a U.S. company's trade secrets in order to benefit a foreign power a federal crime.⁴ The Act has extraterritorial jurisdiction where:

- The offender is a United States citizen or permanent resident; or

- The offender is an organization organized under the laws of the United States or any state or political subdivision thereof; or
- An act in furtherance of the offense was committed in the United States.

Penalties for violations of the Act include fines up to \$10 million for corporations and jail time for individuals.

Recent prosecutions under the Act have included the prosecution of a Swedish national for trade secret and intrusion crimes that originated with acts in Sweden.⁵

Conclusion

The global enforcement priority of IP crimes, and the dedication of additional resources and experts by DOJ, mean that investigations and prosecutions in this area will increase. Companies should consider an audit regarding IP issues in order to assess and mitigate risk.



If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings lawyers:

Los Angeles

Thomas P. O'Brien
213-683-6146
thomasobrien@paulhastings.com

Thomas A. Zaccaro
213-683-6285
thomaszaccaro@paulhastings.com

New York

Kenneth M. Breen
212-318-6344
kennethbreen@paulhastings.com

Sean T. Haran
212-318-6094
seanharan@paulhastings.com

Douglas Koff
212-318-6772
dougaskoff@paulhastings.com

Keith Miller
212-318-6005
keithmiller@paulhastings.com

Washington, D.C.

E. Lawrence Barcella
202-551-1718
larrybarcella@paulhastings.com

Kirby D. Behre
202-551-1719
kirbybehre@paulhastings.com

Adam J. van Alstyne
202-551-1851
adamvanalstyne@paulhastings.com

James D. Wareham
202-551-1728
jameswareham@paulhastings.com

¹ <http://www.justice.gov/opa/pr/2010/February/10-ag-137.html>.

² <http://blogs.usdoj.gov/blog/archives/656>.

³ <http://www.whitehouse.gov/omb/intellectualproperty/ipec/>.

⁴ 18 U.S.C. §§ 1831-1839.

⁵ <http://www.cybercrime.gov/pettersonChar.pdf>.