

Report: foreign sources responsible for most US IP theft

Up to \$600 billion is stolen annually, according to a report from the bi-partisan US IP Commission

By Bruce Berman

Counterfeit goods, pirated software and theft of trade secrets together represent a “systematic threat” to the US economy of between \$225 billion and \$600 billion annually, according to the findings of a 2017 research report, “The Report of the Commission on the Theft of American Intellectual Property”.

“The massive theft of American IP – from companies and universities across the country, from U.S. labs to defense contractors, from banks to software companies – threatens our nation’s security as well as vitality,” says IP Commission co-chair, Admiral Dennis Blair, former director of national intelligence. “This report is just the latest reminder of its scale and critical importance.”

The research is the work of the bi-partisan IP Commission and was published by the National Bureau of Asian Research (NBR). The NBR conducts advanced independent research on strategic, political, economic and other issues affecting US relations with Asia, including China and Russia.

Beachhead

Congratulations are due to the IP Commission for establishing an important beachhead in the global war against IP theft and cybercrime. Its pioneering research provides US and other lawmakers, as well as businesses and the public, with data about IP infringement useful for setting policy.

But despite the value of the commission’s work, there is significant room for improvement. Identifying sources of infringement, including cyberespionage, should not be restricted to sources outside the United States. The report’s focus on foreign counterfeit, trade secret and copyright violations does not account for domestic patent infringement and copyright abuses, which have profoundly affected the software, recording and other industries, and which threaten US security and jobs.

To be fair, the commission’s stated objective is to document and assess foreign threats – including the causes, scale and major dimensions of international IP theft – as they affect the United States, the role of China and appropriate responses to mitigate future problems. Estimating the financial impact of domestic invention theft on US businesses – not just what gets reported in the press about settlements and licences – is no easy task.

Most of the abuse comes from domestic technology businesses which know that they are unlikely to be caught stealing or will have to pay for a patent licence. So-called ‘efficient infringement’ may be a good way for businesses to rationalise their bad behaviour, but it also poses an economic threat which needs to be recognised.

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Preventative measures

The IP Commission report suggests that tools to stop some IP infringements are improving, but have not been fully utilised. These include the 2016 Defend Trade Secrets Act, which to date has not been used. Recommendations spelled out in the report which are aimed at curbing IP theft and safeguarding US competitiveness include:

- blocking foreign companies which repeatedly use or benefit from the theft of US intellectual property by accessing the US banking system;
- considering US companies’ policy of protecting intellectual property as a criterion for approving major foreign investments;
- establishing a rating system in the private non-profit sector on levels of IP legal protection by other nations, including China; and
- supporting US companies which can identify and recover cyber-stolen intellectual property.

The IP Commission pulls no punches in its assessment of the problem: “The theft of American IP is not just the ‘greatest transfer of wealth in human history,’ as General Keith Alexander once put it; IP theft undercuts the primary competitive advantage of American business – the capacity for innovation.”

IP-intensive companies generate more jobs, both directly and indirectly, than firms in other sectors. “The growth of the U.S. economy and the strength of the U.S. labor market depend on the ability of Americans to innovate and increase productivity. The scale and persistence of IP theft, often committed by advanced state-backed groups, erode the competitiveness of U.S. firms and threaten the U.S. economy.”

The IP Commission deserves credit for putting IP theft front and centre and for providing recommendations on how to identify sources of and fixes for foreign infringement. Its commitment to understanding the importance of innovation as a national resource – and the need to protect it – confirms what many in the IP community have long known.

Research challenge

This research report (ipcommission.org) is a challenge to other groups interested in promoting innovation and commerce to examine the source, type and level of domestic IP theft, including patents, on small to medium-sized companies, inventors and universities, and how they affect the economy now and are likely to in the future.

The IP commissioners conclude: “[We] were discouraged by the Obama administration’s inaction on IP theft and cyberespionage... The U.S. government has the capability and resources to address this problem. President Donald Trump should make IP theft a core issue in the early months of his administration.”

Let us hope that the president is listening – and that others are, too. **iam**