

White Collar Crime - USA

IP Taskforce Recommendations on International Cooperation

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On March 31 2004, in response to the growing threat of IP crime, the attorney general of the United States announced the creation of the Department of Justice's Taskforce on Intellectual Property. In October 2004 the taskforce submitted a final report and recommendations to the attorney general.⁽¹⁾ In the report, the taskforce set forth a series of international cooperation recommendations designed to increase the cooperation between foreign governments and the United States in the prosecution of international IP crimes.⁽²⁾ Attorney General John Ashcroft has indicated that the taskforce's recommendations will be broadly implemented.⁽³⁾ A summary of the recommendations is set forth below. International legal practitioners representing foreign defendants charged with IP crimes should familiarize themselves with these efforts to increase cooperation between the United States and foreign governments, and may wish to consult US counsel for advice on the practical ramifications of this increased cooperation.

Deployment of IP Prosecutors and Agents

There is an increasing amount of IP crime in countries that historically have not enforced IP rights. Asia and Eastern Europe are two areas of particular importance because of the increasing amount of counterfeiting that occurs in those regions.⁽⁴⁾ To encourage more cooperation from the countries in these regions in fighting IP crime, the taskforce has recommended that two federal prosecutors and two agents from the Federal Bureau of Investigation (FBI) be assigned to the US embassies in Hong Kong and Budapest, Hungary.⁽⁵⁾ These federal prosecutors and agents would work directly with law enforcement agencies in these regions to coordinate local investigations and prosecutions, and to assist prosecutors in the United States by providing direct contact with foreign law enforcement agencies.⁽⁶⁾ Such assistance may greatly aid US prosecutors, resulting in an increase in the number of IP crimes prosecutions in the United States.

Increasing Use of Informal Contacts for Evidence Gathering

Traditionally, US prosecutors have gathered evidence in foreign countries by making a request of foreign law enforcement agencies pursuant to a mutual legal assistance treaty. This process may take considerable time and important evidence may be lost in the interim, especially evidence that may exist on foreign computers or foreign internet service providers.⁽⁷⁾ Accordingly, in situations in which no mutual legal assistance treaty exists with a foreign country, or in which the gathering of information is time sensitive, the taskforce has recommended that FBI agents and prosecutors assigned to US embassies in foreign countries cultivate relationships with local law enforcement personnel with an eye towards using

those relationships to gather evidence informally. This, too, may result in more IP crime prosecutions because significant evidence may be preserved. If evidence is gathered informally, however, issues about the admissibility of such evidence in US courts may arise.

IP Crime Training Programme

Although IP crime is an international problem, not all countries have the legal system or enforcement resources to combat it. The taskforce has recommended that the Department of Justice identify those countries with substantial IP crime that are dedicated to fighting it, and to invite foreign law enforcement personnel to participate in a training programme to "learn about enforcement strategies, receive assistance on drafting new laws, and receive valuable guidance on methods to track down intellectual property criminals".⁽⁸⁾ Like the other recommendations, elevating the expertise of law enforcement personnel in foreign countries will greatly aid in the global enforcement of IP crime.

Mutual Legal Assistance and Extradition Treaties

In some countries where IP crime is rampant, the United States does not have a mutual legal assistance treaty or has one that does not require assistance for IP crimes, or does not have an extradition treaty or has one that does not require extradition for IP crimes. The taskforce has recommended that the Department of Justice focus on negotiating both legal assistance and extradition treaties with the goal of ensuring cooperation for IP criminal investigations, and extradition of foreign nationals charged with violating US IP laws. The taskforce has also recommended that the Department of Justice emphasize the issue of IP criminal enforcement during discussions with foreign officials.

Comment

The United States has placed a high priority on the investigation and prosecution of IP crimes. That priority includes an emphasis on increased cooperation with foreign governments in light of the global nature of IP crime. The recommendations of the taskforce, which are expected to be broadly implemented by the Department of Justice, is a significant step toward the achievement of these goals. If successful, it is expected that IP criminal investigations and prosecutions, both in the United States and abroad, will significantly increase.

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Endnotes

- (1) Report of the Department of Justice's Taskforce on Intellectual Property (October 2004).
- (2) Taskforce report at 31.
- (3) See "Intellectual Property Crime Crackdown", *San Francisco Chronicle* (October 14 2004).
- (4) Taskforce report at 32.
- (5) *Id* at 32-33.
- (6) *Id*.
- (7) *Id* at 34.
- (8) *Id* at 35.

(9) *Id* at 36-37.

(10) *Id.*

(11) *Id* at 37.