

## Wright: DOJ and FTC must stop being equivocal on IP

Charles McConnell 28 March 2017

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The American antitrust agencies under the Trump Administration should come together and unequivocally promote the importance of intellectual property rights, former Federal Trade Commission member Joshua Wright said yesterday.

Speaking at a conference yesterday, Wright said that some time in the last couple of decades, the FTC and the Department of Justice's antitrust division have "lost the desire to communicate in an unequivocal way" how IP rights lead to economic growth and innovation.

Wright said the greatest challenge for the US antitrust agencies is how they develop the intersection between competition policy and IP, adding that the world continues to listen and watch what the country does.

Authorities around the world look to the United States for guidance – as a former commissioner at Taiwan's Fair Trade Commission confirmed in a later panel. Wright said international enforcers will look to speeches, footnotes in speeches or discussion surrounding footnotes in speeches given by American antitrust officials when developing their policies.

He said the language that US officials use in international advocacy regarding IP and antitrust has become too equivocal to be useful, however.

Wright reminisced about when Robert Pitofsky and Tim Muris lead the FTC: despite being on different sides of the political aisle, both former chairs made it clear that the US antitrust agencies would treat intellectual property rights like real property rights, he said.

That theme, solidified in the symmetry principle of the 1995 intellectual property guidelines, is largely gone from the US agencies' enforcement advocacy and thinking even though the principle remains in the current iteration of the guidelines, Wright said.

He offered several specific policy proposals to the Antitrust Division and FTC as they find their footing in the current administration and fill out personnel vacancies – which currently include their permanent chiefs.

Firstly, Wright said, the permanent FTC chair and Antitrust Division assistant attorney general should travel to Taipei, Beijing, Seoul and others to walk back the positions adopted by the agencies over the last 10 years, and re-establish the mantra that IP rights, like real property rights, are important to facilitate economic exchange and foster innovation.

Secondly, he said, the DOJ should establish a deputy assistant attorney general position whose primary task is international antitrust engagement. That proposition goes hand-in-hand with his idea that the US agencies should engage less passively with its counterparts around the world – and should instead exchange ideas enthusiastically and vigorously.

Wright also warned the FTC about the potential fallout from the Obama Administration's [Qualcomm suit](#). He said how the new administration handles the case will signal an important message on IP and antitrust to the entire world.

He said it is too easy for the FTC – which is currently led by Maureen Ohlhausen, the sole dissenter to the lawsuit – to just say that the case belongs to the previous administration. The case, he said, is now that of the current administration; how the commission handles it will be one of the first indications of how antitrust enforcement under President Donald Trump will handle IP.

The conference concluded yesterday.

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