

Infringing Data and Rogue Agencies

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The internet has made it possible to share data and other information across borders. This has forced U.S. intellectual property laws to evolve, in order to protect property holders' rights. But one law that has remained relatively static is section 337 of the Tariff Act. The International Trade Commission (ITC) has jurisdiction over articles that enter the U.S. and infringe a valid and enforceable patent, copyright, or trademark. It has authority to issue exclusion orders, which direct U.S. Customs and Border Protection to seize the articles at the border. Recently, however, the ITC has vastly expanded its powers. The agency now maintains that it has jurisdiction over data that infringes intellectual property rights and has excluded such data. This poses disturbing implications regarding the breadth of the ITC's jurisdiction and the scope of power it possesses in monitoring electronic data. The rapid rise in 3D printing and the possibility of electronically transmitting blueprints for infringing patents makes it imperative that the scope of the ITC's authority be addressed.

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