



American Intellectual Property Law Association

The Protection of the Confidentiality in IP Advice Remedies and Goals for the Colloquium

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Where are we in U.S.?

- Protection of communications between IP professionals and their clients varies greatly from country to country
- U.S. historically has applied attorney-client privilege to protect client's communications to an attorney for the purpose of securing legal advice
- Privilege has been extended by most U.S. courts to apply to communications with U.S. patent agents

Where are we as to Non-U.S. IP Professionals?

- Protection for communications of client with non-U.S. IP professionals depends on many factors and is not consistently applied in the U.S. courts
- Confidentiality of client communications for attorneys and other IP professionals employed in companies is also applied in an inconsistent manner

Overview of Attorney-Client Privilege in the United States

- Oldest common law privilege protecting confidential communications
- Promotes full communication between attorneys and clients
- Construed narrowly (facts not insulated)
- Broad scope of U.S. discovery in litigation makes it essential
 - Rule 26, Fed Rule of Civil Procedure - Parties may obtain discovery regarding any **nonprivileged** matter that is relevant to any party's claim or defense.

Remedies & Goals for the Colloquium

- Carry forward the prior work of AIPPI toward finding international consensus on the need for confidentiality in IP Professional Advice
- Recognition of Common Goals for Protection
 - Communications with Attorneys
 - Communications with Patent and Trademark Agents
 - Communications with Attorneys and Patent or Trademark Agents of other countries
 - Communications with Attorneys and other IP Professional Employed by Companies
- Work toward drafting a broadly stated international standard for Protection

How Are Changes Made in U.S. Law?

- Common Law Based on Precedent of Prior Cases
- Federal and State Court Systems
 - Over 650 Federal District Judges in 94 Districts
 - Over 170 Federal Appeals Court Judges
 - Separate Court Systems in 50 states and some territories
- Common Law Changes come slowly based on Court decisions, scholarly writings and public policy influences, and good lawyering
- Statutory Changes Are Difficult to Achieve

Other Mechanisms to Influence U.S. Legal Change

- National Conference of Commissioners on Uniform State Laws
 - Non-governmental body to promote uniformity in state laws where desirable and practical
 - Lawyers chosen by the states draft proposed laws
 - Over 200 laws approved and over 100 adopted by at least one state
- American Law Institute
 - Model Acts
 - Restatements (efforts to codify/restate common law)

Educating the Profession and the Public

- Raise the visibility of this issue in appropriate legal circles and law schools
- Highlight the proposed international standard to courts and other agencies concerned with intellectual property enforcement and protection
- Gain support from important government and non-governmental bodies for adopting needed changes
- Provide real-life examples of the damage caused by a lack of protection to businesses and national economies

Potential Benefits of Consensus

- More unified law and practice as to confidentiality
- Consistent approach to applying the law to non-national IP professionals and IP professionals employed in companies
- Enhanced ability of clients/companies in global environment to analyze and communicate concerning IP problems and issues
- Improved situation for all IP professionals to better advise clients

Thank you for your attention!



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