



Getting Ahead of The Game: Using Pre-emptive Submissions to INTERPOL to Stop the Publication of Bogus Red Notices

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Grossman Young & Hammond has a record of successful submissions to the CCF, and of using its expertise to defend clients abused through INTERPOL as part of a broader international protection strategy. It can advise on the value of a pre-emptive submission in a particular case, craft submissions, and update them as the circumstances of the client change.

Victims of harassment through INTERPOL are often surprised to find out that they have been targeted with a Red Notice. They usually learn about this only when they are stopped at an international border, denied a visa, have a bank account closed, or are even arrested. At this point, victims can only play defense, often while facing serious restrictions on travel, criminal prosecution, and significant banking and reputational challenges.

But if a potential victim, and their attorney, understand their vulnerability in advance, and is willing to be proactive, it is often possible to prevent harassment through INTERPOL before it happens. Unbeknownst to many, INTERPOL allows individuals to submit requests to pre-empt the publication of a Red Notice. In some cases, this pre-emptive strategy may allow victims of coercive or politically motivated investigations or prosecutions to avoid the worst outcomes of INTERPOL abuse.

INTERPOL Victims are not just Dissidents and Journalists – Those Operating in the Business and Corporate Sectors are Also Affected

Potential victims, and their attorneys, should understand the advantages of using an offensive legal strategy to defend their finances, businesses, and personal freedom. And



they should understand that it is not just politicians or journalists who are at risk. Any high net-worth individual, anyone who owns a business, or anyone who holds a contract in a regime where the rule of law is not secure, is in danger of being targeted through INTERPOL.

The authors have increasingly advised business and corporate victims of INTERPOL abuse who are pursuing international arbitration, including before the International Centre for the Settlement of Investment Disputes (ICSID) of the World Bank. In these cases, abusive states use Red Notices, or even the threat of a Red Notice, to coerce settlements, initiate illegality proceedings, and prevent investors and their allies from testifying before an arbitral tribunal. The authors brought these types of coercive, state-sponsored strategies to light in recent testimony on INTERPOL abuse before a U.S. Bipartisan Congressional Committee.

Once a Red Notice is published, the Commission for Control of INTERPOL's Files (CCF), INTERPOL's appellate body, does offer a route for individuals suffering from harassment through INTERPOL to seek relief through a deletion request. But this process is opaque, and cases often drag on for over a year. Most importantly, any relief obtained through the CCF is partial and retrospective at best. The CCF cannot recover lost assets, return seized businesses, or fix ruined reputations, and it cannot ensure that nations around the world delete outdated and derogatory information from their immigration and police records.

Beating them at their Own Game: Preemptive Requests

The best way to deal with INTERPOL trouble is to ensure it never arises with a pre-emptive request. The term “pre-emptive” does not appear in the CCF Statute. But INTERPOL states that this term “has generally been understood to refer to those requests addressed to the Commission in which the requester asks INTERPOL not to process any future data in its files even when there are no data currently in INTERPOL’s files, arguing that doing so would violate the Organization’s rules.” In short, INTERPOL now formally acknowledges that individuals can make pre-emptive requests.

INTERPOL states that an individual making a pre-emptive request should “submit all relevant information and corresponding documents in a concise format.” This guidance is notably brief. Because a pre-emptive submission seeks to demonstrate that action “would violate the Organization’s rules,” the submission should follow the same format and contain the same types of information as a deletion request to the CCF.

The most successful preemptive requests provide INTERPOL with a complete picture of the procedural, political and, often, human rights violations that would be suffered by the target of the Red Notice, if one were to be published. This may be the one opportunity that the target of a bogus Red Notice may have, to present their narrative, their side of the story, to INTERPOL. A pre-emptive request highlights that publishing such a Red Notice would be a violation of INTERPOL's Rules and Constitution, and in some cases, its Refugee policy.

An attorney with experience practicing before the CCF is best able to ensure that a pre-emptive request contains the necessary data and relates it to the proper rules to allow INTERPOL to arrive at the correct conclusion: denying a member state's request to publish.

Preemptive Requests v. Requests for Deletion

A pre-emptive request differs from a submission seeking to delete a Red Notice because the CCF does not itself act on pre-emptive requests or issue any decisions. Rather, the CCF passes the request to INTERPOL's General Secretariat, and specifically to the Notices and Diffusions Task Force (NDTF), which is entrusted with receiving requests for Notices and deciding whether to publish them or not. When a country makes a request for a Notice, the NDTF checks it against the preemptive requests it has received. If a pre-emptive request is successful, the Red Notice will not be published. If it is not successful, the Red Notice will be published. In other words, a preemptive request "success" is best understood as preventing the publication of a Red Notice.

Pre-emptive requests are not foolproof. Making such a request on behalf of a client does not guarantee that INTERPOL will block a Red Notice if an INTERPOL member nation requests one against that individual. Rather, it allows for an opportunity for the individual to introduce their own narrative, countering whatever narrative is introduced by the INTERPOL member state. The NDTF itself decides which narrative it believes. Moreover, while in practice INTERPOL will often alert the attorney who made the pre-emptive request if a nation seeks to act against the client, INTERPOL does not promise to do this, and usually does not. A pre-emptive request is not a guaranteed tripwire warning of incoming abuse.

A pre-emptive request also cannot prevent the transmission of a Wanted Person Diffusion (a WPD, sometimes known as a 'Red Diffusion,'), which INTERPOL does not review prior to transmission – though such a request should be incorporated into the review of the WPD

that occurs immediately after it is transmitted. Similarly, a pre-emptive request cannot prevent abuse through INTERPOL's Stolen and Lost Travel Documents database.

But the advantages of a pre-emptive request are compelling, simply because the costs of INTERPOL abuse are often extremely high and because the damage caused by INTERPOL abuse can never be fully healed once it is inflicted.

The People's Republic of China, Mexico, Russia, Turkey, Iran, Venezuela, India, Rwanda, and the nations of Central Asia and the Persian Gulf, in particular, have notorious reputations for INTERPOL abuse. All politically exposed or high net-worth individuals with connections to these regimes, and all businesspeople who have a contract with one of these nations or are employed in or by them, should strongly consider making a pre-emptive submission to INTERPOL instead of ignoring their vulnerability or waiting in fear to be targeted.