

Advisory Committee on Enforcement

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COORDINATING INTELLECTUAL PROPERTY ENFORCEMENT AT THE NATIONAL LEVEL

Contributions prepared by Canada, Georgia, India, Italy, Pakistan, Portugal, the United Arab Emirates, and the United States of America

1. At the tenth session of the Advisory Committee on Enforcement (ACE), one of the topics that the Committee agreed to consider at its eleventh session was the “Exchange of information on national experiences relating to institutional arrangements concerning IP enforcement policies and regimes, including mechanism to resolve intellectual property (IP) disputes in a balanced, holistic and effective manner”. This document introduces the contributions of eight Member States that address national IP enforcement coordination, that were prepared by Canada, Georgia, India, Italy, Pakistan, Portugal, the United Arab Emirates, and the United States of America.

2. The contributions stress the need of close collaboration between the various governmental agencies tasked with the enforcement of IP. In one Member State, the national IP Office coordinates the IP enforcement efforts undertaken by the various actors. Other Member States have established, or are planning to do so as part of a comprehensive IP strategy, dedicated IP enforcement coordination mechanisms, which may also involve the private sector. Stressing the importance of the latter point, one contribution described a case of successful public-private collaboration with payment service providers.

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THE CANADIAN ANTI-FRAUD CENTRE'S PROJECT CHARGEBACK: LEADING THE CHARGE(BACK) AGAINST FAKES!

*Contribution prepared by Mr. Nicholas Gordon, Senior Trade Policy Officer, Intellectual Property Trade Police Division (TMI), Global Affairs, Ottawa, Canada**

ABSTRACT

Canada is pleased to provide an explanation of a novel, effective and unique approach to protecting intellectual property (IP) and combatting counterfeiting. The first of its kind in the world, Project Chargeback is a collaboration between the Canadian Anti-Fraud Centre (overseen by the Royal Canadian Mounted Police), credit card companies and banks who work together to reimburse victims of online fraudsters, at the expense of counterfeiters.

Canada is the first country to have such a program that works to shut down counterfeiters and protect IP in this way. Over a 12-month period, the Chargeback Project registered more than 10,000 confirmations which led to chargebacks being initiated and victims being reimbursed. Since the beginning of the project, the Anti-Fraud Centre has identified over 5,000 merchant accounts world-wide linked to counterfeiting, fraud and IP theft.

Project Chargeback also works to close retailers' merchant accounts who are selling counterfeit goods in their stores.

I. INTELLECTUAL PROPERTY DEVELOPMENTS IN CANADA

1. Canada has undertaken a series of legislative and public awareness activities in recent years. Legislatively, in 2012, Canada passed the Copyright Modernization Act to address digital copyright issues and implement the WIPO Internet Treaties.
2. Canada ratified UPOV 91 in February 2015 and is also in the process of becoming a contracting party to the Nice Agreement, the Singapore Treaty, the Madrid Protocol, the Patent Law Treaty, and the Hague Agreement. In June, Canada was also the twentieth country to ratify/accede to the Marrakesh Treaty, thereby bringing it into force by September 30, 2016.
3. In 2015, the Combatting Counterfeit Products Act was enacted to modernize laws in respect of intellectual property (IP) enforcement. This law strengthens Canada's IP enforcement regime to better combat trademark counterfeiting and copyright piracy both at Canada's borders and domestically.
4. Further to that Act, Canada established a process that allows IP right holders to file a "request for assistance", asking for border officers to temporarily detain suspected counterfeit or pirated goods found at the borders while the right holders seek legal redress. At present, right holders have filed over 138 requests for assistance related to more than 1,500 trademarks.

* The views expressed in this document are those of the author and not necessarily those of the Secretariat or of the Member States of WIPO.

5. The Canadian Intellectual Property Office has established a new business services program with a focus on raising the IP knowledge of Canadian businesses, especially small and medium-sized enterprises (SMEs) and innovators, through outreach and the design, development and delivery of a suite of IP products, services and training to support business innovation, growth and competitiveness.

6. It is in this context that Canada has developed Project Chargeback. Project Chargeback is an anti-counterfeiting and anti-pirating initiative that Canada has put in place domestically and which is having significant success in disrupting the sale of counterfeit and pirated goods over the Internet and preventing their entry into the channels of commerce in Canada.

II. PROJECT CHARGEBAC: LEADING THE CHARGE(BACK) AGAINST FAKES!

A. BACKGROUND

7. IP crime involving the deceptive marketing of counterfeit goods continues to negatively impact the Canadian economy, Canadian consumers, as well as the global economy more broadly. Fraudsters are spoofing legitimate retailers' websites such as Canada Goose, Ugg Boots, Lululemon, Arcteryx, Michael Kors, Coach and many more. Fraudsters have become proficient in producing websites that have the same look and feel as those of the legitimate manufacturer.

8. In 2011, the Canadian Anti-Fraud Centre (CAFC) started receiving a small number of complaints from Canadians reporting that they had been deceived by spoofed websites selling counterfeit or questionable goods. Subsequent follow-up with some of the IP holders revealed that there were thousands of fraudulent businesses selling counterfeit merchandise on the web.

9. In response to these complaints, the CAFC developed a novel, effective and unique approach to combatting counterfeiting and protecting IP. The first of its kind in the world, Project Chargeback is a collaboration between the CAFC (run by the Royal Canadian Mounted Police), credit card companies and banks, who work together to reimburse victims of online fraudsters and then close counterfeit retailers' accounts, making it very difficult for them to conduct their activities online.

B. GOALS AND STRATEGY

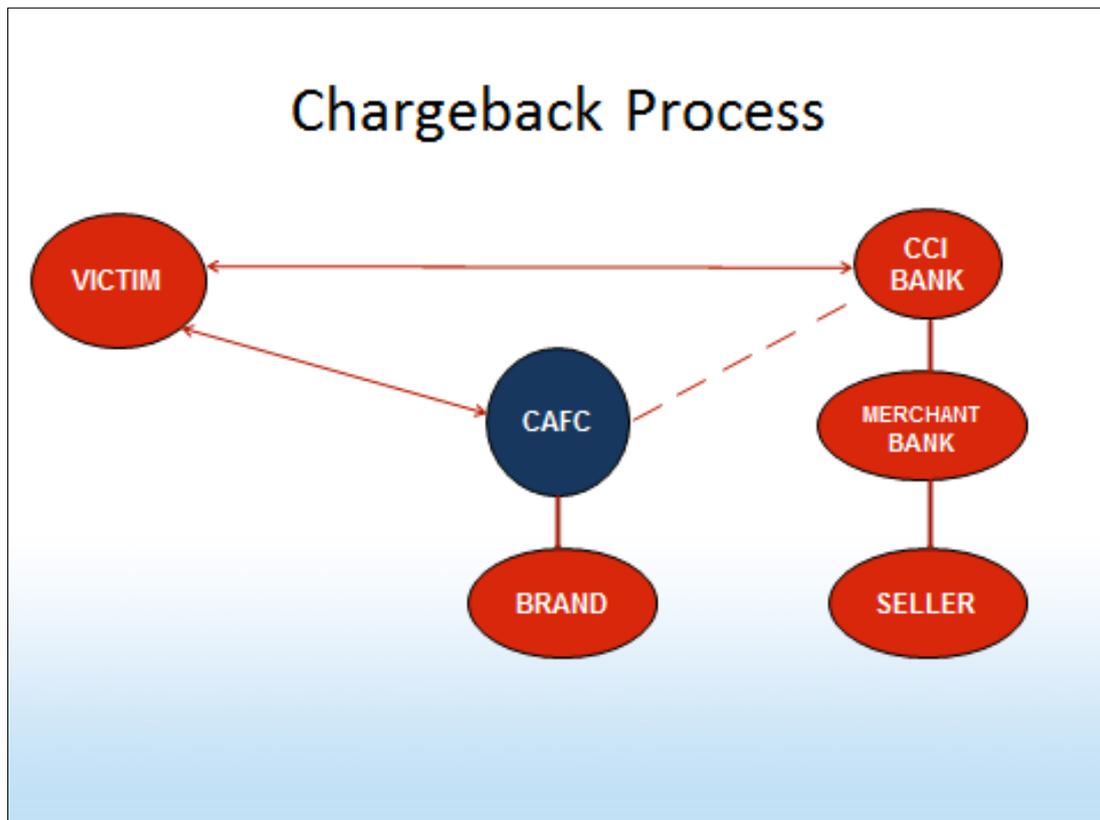
10. The goals of Project Chargeback are to: increase refunds and reduce losses incurred by consumers; reduce overall profits of counterfeit sales by organized crime, and to support and protect brands.

11. The strategy of the program is based on credit card companies' existing contractual arrangements and policies it has with credit card issuing banks and merchant banks accepting credit card transactions, which include a zero tolerance and mandatory chargeback for counterfeit goods. This means there is a 100 per cent refund to the consumer if a product is confirmed as inauthentic by the right holder to the law enforcement authorities.

C. EXPLANATION OF THE CHARGEBACK PROCESS

12. The chargeback process begins when consumers file complaints with the CAFC providing information including details of the goods purchased with their credit card (usually by submitting

photographs), website addresses, dates and amounts of purchases. The CAFC then confirms, with the help of right holders, that the goods are counterfeit and relays the information to the credit card company and the card issuing bank to assess. Following confirmation, a chargeback or reimbursement is triggered against the seller's merchant account. This typically results in the merchant bank terminating the merchant account used by the website to process payments. Also, victims are instructed not to return the counterfeit merchandise to the seller. By not returning the item, the seller subsequently loses the cost of the product and is unable to re-victimize someone else with the same item.



D. IMPACT

13. The impact of the program on all parties involved in the transaction is significant:

- Quasi-extraterritorial enforcement;
- Victims recover 100 per cent of their losses;
- Seller loses the money that the victim had paid for the sale along with a USD 25 chargeback fee per refund;
- Termination of the seller's merchant account;
- Processor and merchant bank may be fined for high number of chargebacks;
- Processor could lose access to the credit card network; and
- Further losses to sellers include:
 - Loss of product (not returned);
 - Loss of all production costs per product; and
 - Loss of all shipping costs including postage and packaging.

E. RESULTS

14. For Canada, the results have been noteworthy:

- From June 2015 to May 2016, the CAFC sent out over 10,000 confirmations initiating chargeback;
- The average potential loss recovered per consumer was approximately CAD 300 to 350 and total losses amounted to CAD 2.8 to 3.3 million (approximately USD 2.2 million);
- Since the project began, over 5,600 merchant accounts have been identified world-wide based on consumer complaints as being used for selling counterfeit goods;
- Over 5,400 merchant accounts identified as being used for selling counterfeit goods have been terminated to date;
- Over the past two years, approximately 40 retail store merchant accounts were closed in Canada; and
- Typically, products bought by the consumer were luxury goods (*e.g.*, jackets, purses, shoes) and sports paraphernalia (*e.g.*, hockey jerseys).

F. FEEDBACK

15. The CAFC has received abundant positive feedback from stakeholders. Consumers are grateful for the assistance they have received from the program. Banks are also positive about the program as it helps them provide better service to their customers, which has a positive impact on the customer's service experience. Last, brand owners strongly support the program, which is demonstrated through the quick responses providing confirmations of counterfeit goods. They believe that the program provides an effective, tactical and cost-efficient means of enforcement.

GEORGIA'S NATIONAL EXPERIENCE ON BUILDING RESPECT FOR INTELLECTUAL PROPERTY, IN PARTICULAR THROUGH INSTITUTIONAL COOPERATION ON ENFORCEMENT POLICIES AND REGIMES

*Contribution prepared by Mr. Nikoloz Gogilidze, Chairman, National Intellectual Property Center, Mtskheta, Georgia**

ABSTRACT

In response to the detrimental impact of counterfeiting and piracy on Georgia's market, and the entry into force of the Deep and Comprehensive Free Trade Area (DCFTA) Agreement with the European Union (EU), Georgia has engaged in a number of initiatives to improve its system of intellectual property (IP) enforcement and to build respect for IP. At the legislative level, a number of amendments have been introduced to harmonize Georgia's IP laws with those of the EU. The National Intellectual Property Center of Georgia (SAKPATENTI) plays an important role in coordinating IP enforcement at all levels; *inter alia* through the work of the Interagency Council on IP Rights Enforcement. It also facilitates capacity building and training for judges, prosecutors, police officers, attorneys-at-law, customs officers, and State officials responsible for IP enforcement, in cooperation with international partners. SAKPATENTI also holds events and campaigns to raise public awareness, in addition to seminars and conferences which serve as a forum for ongoing dialogue on IP enforcement.

I. INTRODUCTION

1. In 2010, a study on counterfeiting and piracy was conducted in Georgia with the assistance of the United Nations Development Programme (UNDP) and the Swedish International Development Cooperation Agency (SIDA¹). Amongst others, the study made the following notable findings:

- The legal framework for protection of intellectual property (IP) was highly harmonized with international standards and provides effective mechanisms against counterfeiting and piracy;
- 95 per cent of software for sale on Georgia's market were pirated and illegal;
- The "Brand Protection Group", a formation of 11 major multinational and local companies operating in Georgia, had concluded that it had lost approximately USD 300 million from counterfeiting; and
- From March 15, 2004, to December 1, 2009, the Investigation Department had opened 18 cases of preliminary investigation into the illegal use of trade and service marks or other trade names (Article 196 of Criminal Code of Georgia).

2. The study clearly demonstrated that creating an appropriate legal framework alone was not enough to adequately protect IP rights (IPRs), and further practical steps were necessary to improve the level of protection for IPRs. In addition, in 2010 Georgia entered into negotiations on the Deep and Comprehensive Free Trade Area (DCFTA) with the European Union (EU). This process brought new challenges and obligations regarding the appropriate enforcement of

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¹ The full text of the Study on Counterfeiting and Piracy in Georgia is available at: <http://www.sakpatenti.org.ge/files/Study%20on%20Counterfeighting%20and%20Piracy%20in%20Georgia.pdf>.

IPRs. In 2012, DCFTA Agreement was signed and the improvement of IP enforcement officially became part of Georgia and the EU's bilateral agenda.

3. In line with Georgia's commitments under the DCFTA Agreement, to prevent and suppress infringements of IPRs and to ensure the implementation of appropriate sanctions, the National Intellectual Property Center of Georgia (SAKPATENTI) drafted and submitted to the Government of Georgia a package of draft amendments to the IP legislation. These new amendments were intended to further harmonize Georgia's legislation with the EU.

4. Since 2012, registrations of IPRs with the customs authorities have increased slightly and border measures carried out by customs has become more frequent. Despite this, the enforcement of IP generally remained weak. Civil cases on IPRs infringement have not reflected the full extent of the situation regarding counterfeiting and piracy in Georgia, as the private sector has not made active use of the legal mechanisms available to them to enforce their IPRs in Georgia.

5. According to the study, Georgia's state budget was losing approximately 3.8 per cent of tax revenue due to the illegal use of IP. In response to this, the Government of Georgia decided to take more active steps to intensify its battle against counterfeit and pirated goods.

II. INSTITUTIONAL COOPERATION ON INTELLECTUAL PROPERTY RIGHTS ENFORCEMENT

6. SAKPATENTI is a state agency which, in addition to granting exclusive IP rights, is responsible for determining and carrying out national IP policies. However, SAKPATENTI does not possess any specific powers to repress IPR violations through civil, administrative or criminal procedures.

7. In its capacity as an IP registrar and policy maker, SAKPATENTI plays an important role in coordinating IP enforcement at all levels, particularly in relation to training and awareness-raising activities. In addition to this, dispute resolution services are provided by the Chamber of Appeals for disputes arising from SAKPATENTI's role as registrar. Another dimension of SAKPATENTI's involvement in IP enforcement is its cross-sector and international cooperation mandate, which include memorandums of understanding between SAKPATENTI and major local and international stakeholders.

8. In order to intensify its fight against counterfeiting and to use governmental resources more efficiently SAKPATENTI has identified three priority areas:

- Institution building and strategy development related to IP enforcement;
- Capacity building for state officials responsible for IP enforcement; and
- Raising overall public awareness to encourage the private sector to protect IPRs.

9. In addition to this, in 2014 the Government of Georgia signed a license agreement with Microsoft. This was a strong signal to the private sector that the Government was actively engaged in the enforcement of copyright and an important step forward towards improving copyright enforcement in Georgia.

III. INSTITUTION BUILDING AND STRATEGY DEVELOPMENT RELATED TO INTELLECTUAL PROPERTY ENFORCEMENT

10. To ensure that IPRs were being respected and properly enforced, the establishment of a single, uniform institutional setup for the enforcement of IP was placed on the agenda.

11. In March 2015, under the umbrella of SAKPATENTI, the Interagency Coordination Council (Council) for IPR Enforcement was established and incorporates all government agencies responsible for IPR enforcement, notably:

- SAKPATENTI (Chairman);
- The Ministry of Economy (Deputy Minister);
- The Ministry of Culture (Deputy Head of the Legal Department);
- The Investigation Service of the Revenue Service of Georgia (Head of the Legal Department);
- The Customs Department (Deputy Head);
- The State Prosecutor's Office (Prosecutor in charge of IP crimes);
- The Business Ombudsman Office (Deputy); and
- Observers from the European Union Delegation to Georgia, the U.S. Embassy of Georgia, and the private/non-governmental sector (Georgian Copyright Agency and others).

12. The Interagency Coordination Council is an advisory body which does not issue any obligatory or official documents binding to any of its members. The primary purpose of establishing the Interagency Coordination Council was to create an efficient platform where the government institutions concerned could exchange their views on IP enforcement issues, discuss problematic and challenging topics, and explore ways of cooperation. The Council also provides practical support to its member agencies on issues within its competence. The representation of the Business Ombudsman's Office in the Council enables it to consider problems and hear positions from both government and private sector perspectives. While the Council was established only two years ago, it has already proved to be effective in relation to the following:

- It enables Council members to provide support in a more efficient way, including through the use of databases of member agencies and the information exchange;
- Once agreed between members, the Council makes its position on IP enforcement issues publicly available; and
- Council opinions are regularly communicated to right holders and, where necessary, the Council holds meetings with right holders to discuss and clearly explain its approach.

13. These activities have facilitated the creation of an enabling predictable environment for the further development and improvement of IP protection in Georgia.

14. Moreover, the Interagency Coordination Council works on identifying the most vulnerable business sectors impacted by counterfeiting and piracy to set priorities and focus on those sectors while competent authorities take legal actions on their own initiative (*ex officio*)². In identifying priorities in its fight against counterfeiting and piracy, the Council takes into account three main criteria:

² Notably, criminal proceedings may be initiated, irrespective of a claim by the right holder, by the Ministry of Interior Affairs or the Investigation Service of the Ministry of Finance. Likewise, administrative proceedings may be initiated *ex officio* by the Ministry of Interior Affairs.

- Whether counterfeiting of particular goods increases risks for public health and safety;
- How active the private sector is in fighting counterfeiting in that particular sector; and
- The level of damages associated with counterfeiting in that particular sector.

15. Based on these criteria, the Interagency Coordination Council decides to focus on particular sectors of business and take *ex officio* actions most intensively against counterfeiting in identified areas. This approach enables the use of government resources more efficiently than attempting to cover all sectors.

IV. BUILDING CAPACITIES AND RAISING PUBLIC AWARENESS

16. In order to further develop the system of IP protection in Georgia, SAKPATENTI adopted an ambitious plan to provide extensive training for all IP-related professionals in legal and practical matters related to IP enforcement. This training targets judges, prosecutors, police officers, attorneys at law, customs officers, investigators and other groups in cooperation with international partners such as the World Intellectual Property Organization (WIPO), the European Patent Office (EPO), the European Union Intellectual Property Office (EUIPO), the United States Patent and Trademark Office (USPTO), the Commercial Law Development Program (CLDP) and more. Cooperation in capacity building has also become a standard feature for all negotiations and memorandums of understanding entered into by SAKPATENTI. Professional development in these target groups directly impacts on the quality and predictability of the IP system.

17. SAKPATENTI is also taking active steps to increase awareness in right holders of the tools and legal mechanisms to enforce their IPRs more efficiently. Every year, SAKPATENTI holds free-access seminars and training activities for private sector representatives to improve their understanding of the legal IP enforcement mechanisms. In addition, the first International Conference “Georgia Against Counterfeiting and Piracy” was held in 2015. This provided an excellent platform for initiating a public-private dialogue on IP enforcement. The Conference was conducted in a productive and active spirit, and the overwhelming feedback from participants was a request for the Conference to be held on a regular basis. Following this, a decision was made to establish it as an annual event. In recent months, there has been a significant increase in the number of successful enforcement cases in Georgia, signaling that the conference is an appropriate platform to address counterfeiting and piracy for both private and public sectors. Many of the key issues, such as the calculation of damages, effective implementation of *ex officio* enforcement powers, development of effective IP enforcement mechanisms and raising public awareness will remain on the agenda for the next conferences.

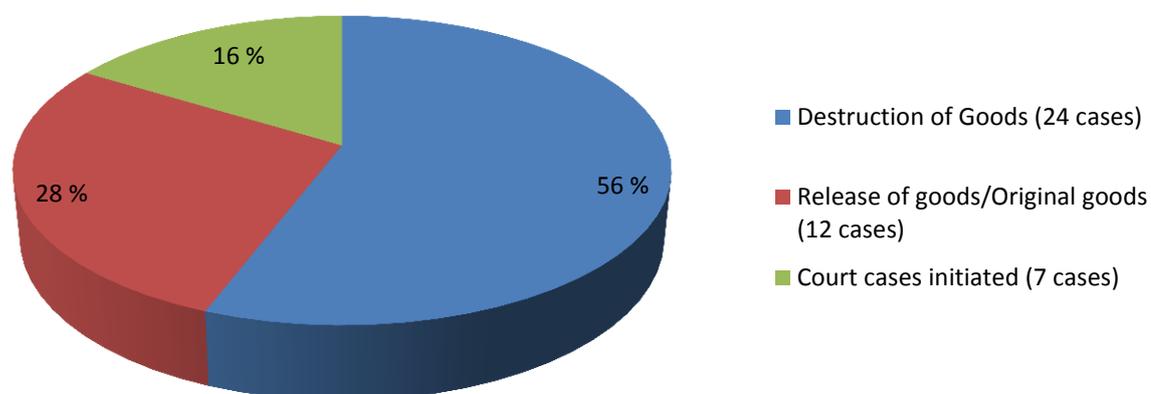
18. It is apparent that proper mechanisms for IP enforcement are crucial for efficiently protecting IP. However, it is no less important to build respect and positive attitudes for IP in society at large. In this respect, SAKPATENTI regularly holds various events and active campaigns to raise public awareness. In cooperation with international partners, SAKPATENTI regularly publishes and disseminates reading material tailored for different sectors of society (elementary schools, students, small and medium-sized enterprises (SMEs), journalists, farmers, etc.).

V. RECENT PROGRESS

19. The activities engaged in by SAKPATENTI have brought tangible results and shown remarkable progress regarding the enforcement of IP. In recent years, the number of seizures of counterfeit goods by customs has increased significantly:

Year	2011	2012	2013	2014	2015
Seizure Cases	14	16	50	43	73

Breakdown of results by cases 2014



Approximate Number of Goods Detained in 2012

Household appliances	385
Alcoholic beverages (bottles)	630
Mobile phones	1,372
Mobile phone accessories	8,760

Approximate Number of Goods Detained in 2013

Household appliances	8,160
Alcoholic beverages (bottles)	6,150
Mobile phones	8,855
Mobile phone accessories	1,017
Agrochemicals (kilograms)	442,323
Perfume (pieces)	58,963
Coffee (packs)	15,000
Stone cutters	8,495
Silicone glue	4,080
Non-alcoholic beverages	74,880
Clothing	4,620

Approximate Number of Goods Detained in 2014	
Alcoholic beverages (liters)	11,044
Car brake pads	2,188
Electronic switches	2,400
Electrode (kilograms)	52,000
Household appliances	1,784
Heaters	1,063
Packs of medicine	720
Mobile phones	5,145
Mobile phone accessories	672
Perfume	720
Watches	925
Lighters	60,000
Clothing	406
Non-alcoholic beverages (pieces)	59,904

20. As these charts demonstrate, there has been an increase in the number of cases and quantity of detained counterfeited goods each year. From 2018, Georgia's customs officers will be authorized to carry out *ex officio* IP enforcement action at the borders, which is expected to result in a further increase in the number of counterfeit goods detained.

21. In 2015, the Investigation Service of the Revenue Service of Georgia initiated 35 criminal cases in relation to infringements of IPRs – which is more than the total number of criminal cases investigated in the last decade. The total value of goods detained through criminal procedures is worth more than GEL 1,000,000.

22. In 2015, the Georgian Copyright Association (GCA) collected more than GEL 500,000 from court proceedings, based on the fees that would have been payable had a valid license agreements been concluded. In 2015, GCA collected more than GEL 3,000,000 in total.

23. In addition to these results, various right holders have provided anecdotal evidence that IP enforcement initiatives are having an effect, reporting that, due to joint activities of Government and brand owners and efficient cooperation between enforcement authorities, counterfeit goods of their brands have reduced by more than 65 per cent in Georgia.

VI. FUTURE PLANS AND CHALLENGES

24. Although Georgia has made considerable progress in recent years with IP enforcement, there are still problems and challenges which will need to be addressed to further improve the protection of IP, including the following:

- Internet piracy is one of the most challenging areas to address. At present, Georgia's government is working to introduce new legislation to address ISP liability;
- After conducting a sectoral study on counterfeiting, Georgia's government will identify the most vulnerable sectors of business and focus its use of *ex officio* enforcement action on the identified sectors;
- Capacity building and awareness raising will remain on the IP enforcement agenda and SAKPATENTI will further intensify its efforts in these areas; and

- Changes to IP enforcement will enter into force in 2017³ and further action related to the interpretation and use of these new legal tools will be needed to ensure the proper development of IP protection system.

25. Ensuring that there is an efficient IP enforcement system in Georgia requires ongoing activities and actions in order to respond to the evolving challenges. In partnership with local and international partners, Georgia hopes that it will maintain its current progress and will continue to facilitate activities to create a predictable and sustainable environment for right holders to protect and enforce their IPRs effectively in Georgia.

³ In case of IP infringements, right holders will be able to demand the removal of the infringing objects from the channels of commerce, their destruction, the destruction of any images related to them, the deletion of any infringing material published on the Internet, or the destruction of any technical device used to manufacture the infringing objects. With regard to damages, right holders will be able to choose between compensation of the losses they incurred, payment of the profits made by the infringer, or compensation in form of a lump sum payment. At the same time, legal mechanisms to determine damages and financial compensation will be established. The amendments will also introduce provisional measures to preserve relevant evidence and to prevent IP infringements, which is particularly important for effective IP enforcement.

THE NATIONAL INTELLECTUAL PROPERTY RIGHT POLICY OF INDIA – ENFORCEMENT AND ADJUDICATION

*Contribution prepared by Mr. Rajiv Aggarwal, Head, Intellectual Property Division, Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, New Delhi, India **

ABSTRACT

The National Intellectual Property Right (IPR) Policy of India establishes the future roadmap for IPRs and facilitates a stable, transparent and service-oriented IP administration in the country. Its clarion call is “Creative India; Innovative India”. The Policy lays down seven objectives, including “Enforcement and Adjudication”, and proposes corresponding action steps.

The Policy aims to:

- Build respect for IPRs among the general public;
- Sensitize inventors and creators of intellectual property (IP) on measures to protect and enforce their rights;
- Build the capacity of enforcement agencies at various levels;
- Identify and undertake measures to check counterfeiting and piracy;
- Hold regular IP colloquia for judges to facilitate effective adjudication of IP disputes;
- Adjudicate on IP matters through specialized commercial courts; and
- Explore alternative dispute resolution (ADR) mechanisms.

The contribution also provides details on how to use website blocking orders as an effective tool against online piracy in India.

I. INTRODUCTION

1. If the past centuries had gold and then land as the most valuable assets, the 21st century clearly belongs to intellectual property rights (IPRs). While creativity and innovation have been a constant in growth and development of any knowledge economy, a country’s ability to transform its “knowledge owned into knowledge shared” will determine its future. To boost innovation, competitiveness and socio-economic growth, it is imperative to harness intellectual property (IP).

* The views expressed in this document are those of the author and not necessarily those of the Secretariat or of the Member States of WIPO.

II. BACKGROUND

2. While India has always been an innovative society, much of the IP subject-matter created remains unprotected both on account of lack of awareness and the perception that IP protection is either not required or that the process to obtain it is unnecessarily complicated.

3. The rationale for the National IPR Policy lay in the need to create awareness about the importance of IPRs as a marketable financial asset and economic tool. Recognising this need, a Think Tank was constituted, which held wide-scale stakeholder consultations with nearly 300 individuals, organisations and other entities, including five foreign Governments. Based on inputs from various Departments of the Government, the Think Tank and internal discussions, the final National IPR Policy of India was prepared.

III. NATIONAL IPR POLICY

4. India has a TRIPS-compliant legal IP framework that reflects the underlying national priorities in the field of IPRs. However, it was important to have a vision document that establishes the future roadmap and guiding principles for IPRs, stimulates creativity and innovation across sectors, and also facilitates a stable, transparent and service-oriented IP administration in the country. The National IPR Policy views IPRs holistically, taking into account all inter-linkages, and thus creating and exploiting synergies between all forms of IP, concerned statutes and agencies. It sets in place an institutional mechanism for implementation, monitoring and review. It aims to incorporate and adapt global best practices to the Indian scenario.

A. OBJECTIVES

5. The Policy lays down seven objectives with action steps to be undertaken by the identified nodal Ministry or Department. Milestones and timelines will be developed for each action point. These objectives are:

- IPR Awareness: Outreach and Promotion – to create public awareness about the economic, social and cultural benefits of IPRs among all sections of society;
- Generation of IPRs – to stimulate the generation of IPRs;
- Legal and Legislative Framework – to have strong and effective IP laws, which balance the interests of rights owners with larger public interest;
- Administration and Management – to modernize and strengthen service-oriented IP administration;
- Commercialization of IPRs – get value for IPRs through commercialization;
- Enforcement and Adjudication – to strengthen the enforcement and adjudicatory mechanisms for combating IPR infringements; and
- Human Capital Development – to strengthen and expand human resources, institutions and capacities for teaching, training, research and skill building in relation to IPRs.

B. VISION STATEMENT

6. An India where creativity and innovation are stimulated by IP for the benefit of all; an India where IP promotes advancement in science and technology, arts and culture, traditional knowledge and biodiversity resources; an India where knowledge is the main driver of development, and knowledge owned is transformed into knowledge shared.

C. MISSION STATEMENT

7. Stimulate a dynamic, vibrant and balanced IPR system in India to:

- Foster creativity and innovation and thereby promote entrepreneurship and enhance socio-economic and cultural development; and
- Focus on enhancing access to healthcare, food security and environmental protection, among other sectors of vital social, economic and technological importance.

D. SLOGAN

8. “Creative India; Innovative India”.

IV. ENFORCEMENT AND ADJUDICATION

9. IPRs are essentially private rights, and as such the primary obligation of protecting them is on the IP owners who can seek legal remedies for the enforcement of their rights. But it is crucial to provide an effective mechanism for IP enforcement, even as it is equally important to balance the rights of IP owners with the interests of the public in a manner conducive to social and economic welfare and to prevent misuse or abuse of IPRs.

10. The focus is on building respect for IP among the general public, especially the younger generation. This requires customized outreach programs for schools, centers of higher education including engineering colleges and law schools, and industry clusters, especially in the micro, small and medium-sized enterprise (MSME) sector. The Policy proposes to tackle both perspectives – creating awareness about one’s own IP and the need to protect it, as well as the value of the IPRs of others and the need to respect them.

11. Granting a legal right under statutory law is ineffective if the holder is unaware of the mechanism to enforce it. It is thus important to familiarize inventors and creators of IP with the measures for protecting and enforcing their rights. At the same time, there is also a need to build the capacity of the enforcement agencies at various levels, including the strengthening of IPR cells in State police forces. Measures to curtail counterfeiting and piracy also need to be identified and undertaken.

12. The complexities involved in IP litigation require enhanced knowledge to handle them. It would thus be desirable to adjudicate IP disputes through specialised commercial courts. Certain IP laws also provide for criminal remedies, such as the Trademarks Act and the Copyright Act. While these two Acts foresee imprisonment from six months to three years, offences under these Acts also fall within the ambit of the Prevention of Money Laundering Act, 2002, which provided for incarceration between three and seven years – a severe deterrent against infringement.

13. Regular IP workshops / colloquia for judges at judicial academies and other fora would facilitate effective adjudication of IPR disputes. Multi-disciplinary IP courses / modules for other stakeholders such as lawyers are also needed.

14. Alternative dispute resolution (ADR) mechanisms may also be explored. This will help reduce timelines by providing for simpler processes and encouraging mutual settlements.

A. ACTION POINTS

15. The National IPR Policy identifies certain action steps to be taken towards attaining this objective as outlined below:

a) Create Awareness of the Value of IP and a Culture Respectful of IP

- Educating the general public, especially the youth and students, about the negative effects of counterfeit and pirated products;
- Engaging with all levels of industry, including e-commerce, in order to create respect for IPRs and devise collaborative strategies and tools; and
- Familiarizing inventors and creators of IP with the measures for protecting and enforcing their rights.

b) Take Strong Measures Against Attempts to Treat Generic Drugs as Spurious or Counterfeit

c) Undertake Stringent Measures to Curb the Manufacture and Sale of Misbranded, Adulterated and Spurious Drugs

d) Reinforce Public Awareness as well as Legal and Enforcement Mechanisms, Including Technology-based Measures, to Combat Offline and Online Piracy

e) Support Small Technology Firms in Safeguarding Their IP Rights; for instance, Support for IPRs in Information and Communication Technology Focus Areas will be Provided Through Easy-to-Use Portals

f) Enhance Assistance to Smaller Firms for the Protection of Their IPRs Internationally, such as Through the Support for International Patent Protection in Electronics and IT (SIP-EIT) Scheme

g) Vigorously Pursue Incidents of Misappropriation of Traditional Knowledge, Genetic Resources and Traditional Cultural Expressions in Other Countries

h) Strengthen Enforcement Mechanisms for a Better Protection of IP Rights

- Enhancing the coordination between the various agencies and providing direction and guidance on strengthening enforcement measures; coordinating with and sharing of intelligence and best practices at the national and international levels; studying the extent of IP violations in various sectors; examining the implications of jurisdictional difficulties among enforcement authorities; and introducing appropriate technology-based solutions for curbing digital piracy;
- Working closely with the State governments to establish IP cells for curbing IP offences;
- Augmenting manpower, infrastructure, and technological capabilities of the enforcement agencies and building capacity to curtail the proliferation of digital crimes;
- Providing regular training, including refresher sessions, for enforcement officials at the academies of their agencies;
- Encouraging the application of technology-based solutions in the enforcement of IPRs;
- Initiating fact-finding studies in collaboration with stakeholders concerned to assess the extent of counterfeiting and piracy and the reasons behind it as well as exploring measures to combat it; and
- Addressing the issue of Indian works and products being pirated and counterfeited abroad with the countries concerned.

i) Address Licensing Practices or Conditions that May Have an Adverse Effect on Competition Through Appropriate Measures, Including the Regulation of Anti-competitive Conduct in the Market by the Competition Commission of India

j) Facilitate Effective Adjudication of IP Disputes Through Different Measures

- Adjudicating IP disputes through Commercial Courts, set up at the appropriate level;
- Creating IP modules including case law for the benefit of judges who deal with IP; conducting regular IP workshops / colloquia at the judicial academies; and
- Promoting ADR of IP cases by strengthening mediation and conciliation centers, and developing ADR capabilities and skills in the field of IP.

B. JOHN DOE ORDERS AGAINST INFRINGING WEBSITES

16. Online copyright piracy is assuming gigantic proportions across the globe, and no country is immune to this menace. Some of the features that make enforcement difficult are that:

- The anonymity afforded by the Internet complicates effective enforcement and protection;

- Statutory “safe harbour” for online resources now requires that notices be served on infringing online resources prior to the instigation of legal proceedings;
- The often encountered extra-territorial nature of piracy operations puts websites beyond the reach of Indian courts;
- Injunctions against individual uniform resource locators (URLs) simply lead to the URL being changed instantly, rendering such orders moot; and
- Criminal measures are only effective when pirates are identified within India.

17. A possible and substantially effective solution to this problem lies in the civil remedy of website blocking orders.

18. In earlier times, in order to cease copyright infringements, injunctions were issued to Internet service providers (ISP) in relation to specific works (such as, for example, a film identified by its title). However, as it was difficult to identify pirate websites or isolate copyright infringing material, ISPs often could not enforce these orders and had to face the threat of contempt of court.

19. The system has evolved in that it is now possible to issue website-specific blocking orders¹. The judicial orders, “John Doe orders” in effect as they are issued against persons whose identity is unknown, are targeted at specific websites, so-called “pirate” or “rogue websites”², as the overwhelming majority of the content hosted on such sites infringes copyright. Notices, even if ineffective, are still issued to the ISP and, if identifiable, to the owner of the domain and/or website in accordance with the statutory provisions. Plaintiffs are then able to obtain court injunctions ordering specific named websites to cease the infringement of their copyright.

20. ISPs providing Internet bandwidth connectivity are directed to enforce the injunction by blocking the access of Indian subscribers to the websites subject of the order. The concerned Government Departments are directed by the court to require ISPs act as per court orders, in accordance with terms and conditions of the license agreement they have with the Department of Telecommunication for the provision of internet services.

V. THE ROAD AHEAD

21. The all-encompassing IPR Policy will nurture the IP culture, guiding and enabling all creators and inventors to realize their potential for generating, protecting and utilizing IPRs, and thus contribute to wealth creation, employment opportunities and business development in the country, even as it endeavours to strike the right balance between interests of innovators and wider public interest.

22. Already in the run-up to the actual finalization of the IPR Policy, one could witness substantive achievements. Copyrights and industrial property rights have been brought under one umbrella. Another success has been the much needed several-fold augmentation of manpower in the Patents Office and Trademark Registry. This will reduce the time taken for

¹ The Copyright Act does not explicitly provide for website blocking orders. However, the courts adopted a common law approach to issue such orders with a view to protecting copyrighted material online. This change is not related to the adoption of the IPR Policy.

² The terms pirate or rogue websites is not defined in the legislation. The courts determine whether or not to grant an order based on the particular facts of each case.

first action by the Office for patent applications from the present five to seven years to just 18 months by March 2018; in the case of trademarks, time will be reduced from 13 months to just one month by March 2017. The awareness generated by the Policy has caused patent filings to increase by 10 per cent in the year 2015-16 to 46,916 applications *vis-à-vis* the previous year and trademark filings by a phenomenal 35 per cent in the same period to 283,060 applications.

23. The outlook on the IP horizon is promising: both for holders as well as users of IP.

ITALIAN INITIATIVES TO FIGHT COUNTERFEITING AT THE STRATEGIC AND OPERATIONAL LEVEL

Contribution prepared by Ms. Francesca Arra, Senior Officer, Assistance to Enterprises in the Fight Against Counterfeiting, IP Promotion and International Affairs, Directorate-General for the Fight Against Counterfeiting – Italian Patent and Trademark Office (DGLC-UIBM), Ministry of Economic Development of Italy

ABSTRACT

Italy has a diverse institutional framework for anti-counterfeiting enforcement, including a number of enforcement agencies (entities or bodies whose mission is to compel observance of anti-counterfeiting laws) and organizations (public authorities, business and consumer associations) with vested interests in how the enforcement framework operates. Traditionally, these players have cooperated in investigation activities and operations in effective ways. However, an increase in the growth of counterfeiting in recent years has highlighted the importance of institutional coordination, not only at the implementation stage but also at the strategic level. Such strategic coordination is undertaken by the Italian National Anti-counterfeiting Council (CNAC) and this document provides an overview of some of the initiatives undertaken by CNAC to strengthen enforcement effectiveness both nationally and internationally. At the operational level, this document also reports on the anti-counterfeiting hotline, which provides SMEs and consumers in Italy with information on how to enforce Intellectual Property Rights (IPRs) in case of infringement. This service is managed by the Directorate-General for the Fight Against Counterfeiting – Italian Patent and Trademark Office (DGLC-UIBM), Ministry of Economic Development.

I. THE ITALIAN NATIONAL ANTI-COUNTERFEITING COUNCIL (CNAC)

1. The National Anti-counterfeiting Council (CNAC; <http://www.cnac.gov.it/>) is the Italian inter-ministerial body set up under Article 145 of the Italian Industrial Property Code (CPI) to direct, boost and coordinate the strategic initiatives undertaken by enforcement agencies, public administration entities, business and consumer associations in the fight against counterfeiting. Its ultimate goal is to improve enforcement action against counterfeiters at national level. Established by the Development Law in 2009, CNAC was set up at the Ministry of Economic Development on December 20, 2010.

2. CNAC's members include 11 Ministries (Economic Development, Economy and Finance, Justice, Interior, Defense, Agriculture, Culture, Employment and Social Policy, Foreign Affairs, Health, Public Administration) and the Association of Italian Municipalities (ANCI). Representatives of enforcement agencies, business associations and consumers associations also take part in the work undertaken by CNAC. While this is not specifically prescribed by the law, these organizations have been involved since the formation of CNAC, assisting in the creation of dedicated Commissions in order to include a diverse range of competencies needed to fight counterfeiting.

* The views expressed in this document are those of the author and not necessarily those of the Secretariat or of the Member States of WIPO.

3. CNAC follows a public-private partnership governance model aimed at encouraging dialogue and collaboration among all stakeholders dealing with anti-counterfeiting. Governance mechanisms aimed at encouraging dialogue and collaboration among all private and public stakeholders dealing with anti-counterfeiting were defined since CNAC took up its work. In particular, two Advisory Commissions have been established within CNAC, both contributing to the identification of action proposals:

- The Advisory Committee of Enforcement Agencies, which brings together all bodies and institutions in charge of enforcing the observance of anti-counterfeiting law; and
- The Advisory Commission of Productive Forces and Consumers, which brings together representatives from industry, agriculture and consumer organizations.

4. At a more operational level, different Thematic Commissions have been established in order to investigate the impact of counterfeiting in specific sectors (food, design, electronics, pharmaceuticals and cosmetics, exhibitions, toys, mechanical, textile-fashion-accessories, works art, piracy, sports) or with respect to cross-cutting themes (lately: Internet counterfeiting, Made in Italy protection, Enforcement at local level), and assist CNAC's President and Secretariat in developing appropriate operating proposals.

5. This "participatory governance" guarantees a broad-spectrum involvement and fruitful collaboration (so far more than 70 associations and institutions with over 150 experts have been involved) both from the public and private players, as demonstrated by the content of the National Anti-counterfeiting Plan in 2012 and more recently in the identification of actions proposals within the 2014-2015 strategic framework.

6. The CNAC President is the Minister for Economic Development and the CNAC Secretariat is provided by the Directorate-General for the Fight Against Counterfeiting – Italian Patent and Trademarks Office (DGLC-UIBM) within the Ministry of Economic Development, which also bears its operating costs. Participation in the CNAC does not entitle its members to any form of expense reimbursement or allowance

A. CNAC ACTIVITIES AT THE NATIONAL LEVEL

a) The Identification of Priority Areas

7. CNAC fulfills its mission by identifying priority areas in the fight against counterfeiting at the national level and coordinating the respective action taken by the relevant players.

8. In 2012, the Council identified six priority areas in the strategic National Anti-counterfeiting Plan, which was released officially in November 2012 at a dedicated event in Milan in the presence of 500 delegates and representatives of national and European authorities and relevant national public and private institutions involved in anti-counterfeiting activities:

- awareness raising;
- enforcement;
- territorial coordination;
- fight against online counterfeiting;
- business training on IPR protection; and
- "Made in Italy" protection from foreign usurpation.

9. The Plan highlighted 50 projects and initiatives, identified by CNAC as best practices in each priority area, acting as examples of actions that should be undertaken in the implementation phase by the different actors.

10. Starting in 2014, a review of the priority areas was carried out in view of two important institutional events: the Italian Presidency of the EU in the second half of 2014 and the Universal Exposition that took place in Milan from May to October 2015 (Expo 2015 – Feeding the Planet. Energy for life).

11. As a result of the review, the current priority areas are:

- “Made in Italy” protection from foreign usurpation;
- Anti-counterfeiting law enforcement at the local level; and
- Fight against online counterfeiting.

b) Voluntary Agreement for e-Commerce

12. Proposals for action have also emerged from the shared efforts of anti-counterfeiting players. One important proposal concerned the facilitation of a voluntary agreement between IP right holders and e-commerce platforms/merchants, setting up shared rules and procedures to make e-commerce activities as counterfeiting-free as possible (priority area “fight against online counterfeiting”).

13. In July 2015, the proposal was implemented through the signing of the “Charter for the Development of Best Practices to Combat the Online Sales of Counterfeit Goods” (so called *Carta Italia*). Elaborating on similar initiatives at the European level (for instance, the French *Charte de lutte contre la contrefaçon sur internet* or the European Memorandum of Understanding on the Sale of Counterfeit Goods over the Internet), the Charter brings together right holders, online merchants and e-commerce platforms to identify measures and procedures to prevent and react to online counterfeiting. A distinctive feature of this charter is the “trustmark” issued by Netcomm (one of the three original signatories of the agreement, the other two being the Ministry of Economic Development and Indiam), representing e-commerce platforms and online merchants. In order to become a member of Netcomm and being granted the trustmark, these players need to be compliant with the trustmark rules, which include anti-counterfeiting compliance. A second distinctive feature is the role assigned to consumer associations, which for the moment are not signatories of the charter but are integrated in the reporting procedures of take down requests provided for by the charter.

14. CNAC is now promoting the Charter among other stakeholders to attract new signatories (there are 9 signatories as of May 2016) and further strengthen synergies to effectively tackle online counterfeiting. It also acts as a facilitator between right holders and e-commerce platforms in the identification of effective operating procedures.

c) Guidelines for Local Governments

15. Another important step forward in the national fight against counterfeiting was the proposal to develop guidelines for local government authorities to align the operational efforts by local enforcement agencies to the strategic vision set up at national level (priority area “anti-counterfeiting law enforcement at the local level”).

16. In pursuance of this proposal, “Guidelines for the Prevention and Fight Against Counterfeiting” were adopted in June 2015 by the Ministry of Economic Development and the Ministry of the Interior to strengthen the fight against counterfeiting at the local level. The Guidelines have been distributed to all local government authorities (*Prefecture*) in order to assist them with adopting a model of cooperation and operational synergies among stakeholders at the municipality or province level along the lines of the national CNAC or other best practices already in place.

17. The guidelines have already yielded results. On March 9, 2016, the Prefecture of Rome and the Ministry of Economic Development signed a one-year Action Plan for the municipality and province of Rome that brings together all local players affected by counterfeiting and involved in fighting it. The Plan envisages initiatives in the following areas: analysis, public awareness, training of enterprises, and training of enforcement operators.

18. Similar activities will take place in 10 cities in 2016-2017, from Northern to Southern Italy, including the main urban areas (Milan, Turin, Venice, Florence, Naples, Palermo). The Drafting of Action Plans and Memoranda of Understanding for these provinces will be preceded by research identifying local enforcement needs based on the specific counterfeiting activities in each territorial area.

B. CNAC ACTIVITIES AT THE INTERNATIONAL LEVEL

19. In 2014, CNAC promoted, jointly with the French National Anti-Counterfeiting Committee and the French National Institute of Industrial Property (INPI), a renewed cooperation among Euro-Mediterranean (EUMED) countries in the fight against counterfeiting. Initiated in 2008 among seven EUMED countries, this cooperation was expanded to 16 countries (Algeria, Bulgaria, Croatia, Egypt, France, Greece, Italy, Jordan, Lebanon, Malta, Morocco, Portugal, Romania, Serbia, Slovenia, and Spain) at the “Third Euro-Mediterranean Meeting of National Committees Against Counterfeiting”, which was hosted by CNAC in Rome on November 25, 2014.

20. In the “Declaration of Rome to Strengthen the Fight Against Counterfeiting”, adopted at that Meeting, the participating countries committed themselves to:

- Maintaining and strengthening domestic coordination in the fight against counterfeiting by promoting public-private partnerships between national and local authorities, institutions, entities and associations dealing with combating counterfeiting;
- Supporting the creation or maintaining of a National Anti-counterfeiting Committee and initiatives to strengthen existing ones in their countries; and
- Establishing and enhancing international cooperation among National Anti-counterfeiting Committees, both bi- and multilaterally, in the following fields: enforcement of IPRs; fight against online counterfeiting; communication, information and education; training; and legislative and institutional frameworks.

21. To achieve these goals, the signatory countries agreed to create a Network of Anti-counterfeiting Committees (CNAC EUMED Network) and designate a focal point, acting as a facilitator towards its national authorities in the event of a request for support from a focal point of one of the other signatory countries in relation to the reporting of a counterfeiting case or other enforcement-related issues in that country.

22. As a follow-up to the activities of the CNAC EUMED Network, an international conference on “The Protection of the Agri-food Sector in the Euro-Mediterranean” was organized in Milan by CNAC on October 27, 2015, where improvements in the legal frameworks of the EUROMED countries were highlighted, with a commitment to examine them in depth in an upcoming study.

II. THE ANTI-COUNTERFEITING HOTLINE

23. The Anti-counterfeiting Hotline is a helpdesk service aimed at providing consumers and entrepreneurs or inventors with information on IPRs, their protection and their enforcement. It is hosted by DGLC-UIBM and managed through a dedicated email account (anticontraffazione@mise.gov.it) and hotline number (06-47053800) in collaboration with the *Guardia di Finanza* (the main police enforcement authority in the fight against counterfeiting within Italy).

24. It is important to note that the anti-counterfeiting hotline is not a consultancy service aiming to replace targeted professional advice. Rather, it represents a first-level assistance service, as it provides users with the information basis for deciding whether or not to pursue a case and, in the affirmative, how to do it (through administrative, civil or criminal enforcement). Where and when appropriate, the *Guardia di Finanza* (through its specialized Market Protection and Technological Fraud Units) and/or Customs (Anti-fraud Service) initiate investigations to determine the existence and nature of infringements.

25. The Anti-counterfeiting Hotline Service began operating in 2006. Enquiries on counterfeiting-related issues and reports on IPR infringements have increased in the last years with a peak in 2015 with 1,166 enquiries/reports received. Reports of online infringements have also spiked, representing more than 70 per cent of the reports in the first three months of 2016.

26. The assistance offered through this service is free of charge for the users (either consumers or entrepreneurs).

COORDINATING THE ENFORCEMENT OF INTELLECTUAL PROPERTY IN PAKISTAN

*Contribution prepared by Mr. Muhammad Ismail, Deputy Director, IPR Enforcement, Intellectual Property Organization of Pakistan, Islamabad, Pakistan**

ABSTRACT

This document provides an overview of the role that the Intellectual Property Organization of Pakistan (IPO-Pakistan) plays in coordinating intellectual property (IP) enforcement efforts in Pakistan. It discusses some of the recent initiatives undertaken by IPO-Pakistan in cooperation with other IP enforcement agencies and stakeholders and capacity-building and awareness-raising activities in which IPO-Pakistan has participated.

I. THE ROLE OF THE INTELLECTUAL PROPERTY ORGANIZATION IN ENFORCING INTELLECTUAL PROPERTY

1. The Intellectual Property Organization of Pakistan (IPO-Pakistan) is the focal body for the registration and protection of intellectual property rights (IPRs) in Pakistan. The core functions of IPO-Pakistan include the administration of intellectual property (IP) laws; coordination with counterpart international organizations; the promotion of IP education, research and awareness; providing advice to the Federal Government on policy relating to IP; controlling, managing and supervising IP offices established under National IP Laws; and the coordination of IP enforcement.
2. The IP enforcement related functions of IPO-Pakistan are set out in section 13 of the IPO Act of 2012. They include monitoring enforcement and protection of IPRs through IP enforcement agencies, conducting enquiries and other activities related to IP offences, and the referral of IP criminal offences to law enforcement authorities.
3. In accordance with section 14 of the IPO Act of 2012, the mandate of IPO-Pakistan also extends to the promotion of IP through advocacy. This work includes: creating awareness and imparting training on IP; reviewing the policy framework for IPRs; holding open hearings on IPRs; using its website to post material such as educational materials or information on IP inquiries that are under review or completed; and coordinating with trade associations and related organizations on IP awareness raising and the implementation of IP laws.

II. THE WORK OF THE ENFORCEMENT COORDINATION COMMITTEES

4. At the operational level, enforcement coordination has been institutionalized through Enforcement Coordination Committees located in Islamabad, Karachi and Lahore, which are comprised of all of the agencies that are involved in the enforcement chain. Its membership comprises IPO-Pakistan, the Federal Investigation Agency (FIA), Police, Pakistan Customs and the Pakistan Electronic Media Regulatory Authority (PEMRA). Prominent businessmen and

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IP experts from the private sector may participate in the IP enforcement coordination meetings by special invitation. The Anti-Counterfeit and Infringement Forum (ACIF), Pakistan Industrial Property Rights Association (PIPRA), Federation of Pakistan Chambers of Commerce and Industry (FPCCI) and Overseas Chamber of Commerce and Industry (OICCI) are also invited to IP enforcement coordination committee meetings.

5. IPO-Pakistan's IP enforcement coordination initiative has not only developed effective linkages with all of the agencies in the enforcement chain, but has also brought private sector investigation agencies engaged in the detection of IP crime to the enforcement arena. As this initiative continues to realize these synergies, the market space for piracy and counterfeiting has started to shrink, with expanding enforcement and deepening IP awareness in the country.

6. A dedicated Directorate General in the Federal Board of Revenue (FBR) and Directorate in the FIA has been established to effectively address IP violations. IPO-Pakistan has established Anti-Piracy and Anti-Counterfeiting Cells at its offices in Islamabad, Karachi and Lahore to address the issues of piracy and counterfeiting that is being faced by IP right holders in the market.

III. COOPERATION WITH NATIONAL AND INTERNATIONAL PARTNERS

7. IPO-Pakistan has strengthened its coordination with IP enforcement agencies (including Police, FIA, Customs and PEMRA) by re-notifying the IP enforcement committees in Islamabad, Lahore and Karachi. In connection with this, three meetings have recently been conducted in Islamabad, Karachi and Lahore, respectively.

8. A Memorandum of Understanding (MOU) regarding the cooperation between IPO-Pakistan and the FBR was signed on October 27, 2015. The MOU facilitates sharing registered IP data to effectively control border violations. In the light of this MOU, IPO-Pakistan has provided Pakistan Customs with access to trademark data through the Industrial Property Administration System (IPAS). The Directorate General of IP of FBR is coordinating with IPO-Pakistan and customs posts all over the country in this context.

9. In 2015, IPO-Pakistan, in coordination with FIA, developed guidelines for field officers titled "Copyright Law Enforcement Manual for FIA Officials". The guidelines are designed to assist FIA officers with enforcement action under Pakistan's copyright laws. These guidelines are a very useful tool for FIA field officers who investigate and register first information reports in relation to copyright violations.

10. The World Intellectual Property Organization (WIPO) has provided Pakistan with technical and financial support that has greatly assisted in creating awareness for building respect for IP and in capacity building for members of the judiciary and enforcement agency officials. In 2012, a delegation of 20 judges from Pakistan visited Singapore to attend a Judges Colloquium, and five officials from enforcement agencies visited the UK to attend a specialized training course for trainers on IP enforcement. Over the past five years, WIPO has funded a number of training programs related to IP enforcement at the regional, sub-regional and international level that have been attended by officials of IPO-Pakistan and other stakeholders from Pakistan.

IV. OUTLOOK

11. In the future, IPO-Pakistan intends to include special training sessions for enforcement agencies on IP enforcement in its annual work plan; develop guidelines for Police and Pakistan Customs on IP enforcement modelled on the FIA guidelines; facilitate the sharing of data on IP enforcement cases by enforcement agencies; improve awareness raising through a media campaign on respect for IP; and establish more IP Enforcement Coordination Committees in various cities in Pakistan.

ENFORCING INDUSTRIAL PROPERTY RIGHTS IN PORTUGAL: THE EXPERIENCES OF THE NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY AND THE ANTI-COUNTERFEITING GROUP

Contribution prepared by Mr. Rui Solnado da Cruz, Legal Adviser, International Relations and Legal Affairs Department and Mr. José Mário Sousa, Legal Adviser, Trademark and Patent Department, National Institute of Industrial Property, Lisbon, Portugal

ABSTRACT

Over the past few years, Portugal has significantly intensified its efforts to increase the enforcement of industrial property rights and to create a more conducive environment for doing business. Currently, the Portuguese legal system offers effective remedies to enforce industrial property and to punish offending behavior, in line with European and international best practices. Created in September 2010 with the aim of increasing the coordination of national authorities and promoting cooperation between them and the private sector, the Anti-counterfeiting Group plays a key role today in combating industrial property infringements at the national level and is the primary platform for the exchange of best practices and expertise. Portugal has also witnessed a significant increase in the number of seizures of counterfeit goods, with a greater focus on the problem of the infringement of industrial property rights in all its forms.

I. LEGAL FRAMEWORK

1. Portuguese institutional support for enforcing intellectual property (IP) has increased since the adoption of the Directive 2004/48/CE of the European Parliament and of the Council of April 29, 2004, on the enforcement of intellectual property rights (IPRs). Following its adoption, Portugal established an internal framework of measures and remedies endowing administrative and judicial entities with the power to efficiently and effectively react where IPRs are under threat, while creating a level playing field for right holders in the European Union (EU).

2. In this context, an entirely new section was added to the Portuguese Industrial Property Code (Decree Law 36/2003, March 5), under the title “Measures and Procedures to Ensure the Enforcement of Industrial Property Rights”, with a view to specifying the means of obtaining evidence (and the way to preserve it) and information on the origin and distribution networks of goods and services suspected to violate industrial property rights. The Portuguese Industrial Property Code also foresees provisional measures to prevent any imminent or stop any ongoing infringement.

3. Under Portuguese law, infringements of industrial property rights can be addressed using two different legal mechanisms. Firstly, in Court, either through criminal procedures (the violation of an industrial property right is a criminal offence punishable by a prison sentence of up to three years¹) or civil action (for non-contractual liability compensating the holder of

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¹ Notably, criminal liability is foreseen for:

- the “violations of patent exclusivity, the utility model or the semiconductor topography” (Article 321 of the Industrial Property Code);
- the “violation of exclusive rights to designs or models” (Article 322 of the Industrial Property Code);

[Footnote continued on next page]

industrial property rights for damages suffered as a result of the infringing activities). Secondly, the National Institute of Industrial Property (INPI) can take administrative measures, most commonly in cases of unfair competition, which is not dependent on a specific complaint from the right holder.

4. As an alternative to the judicial and administrative procedures, the Portuguese legal system, since 2009, has also provided for an institutionalized arbitration center named “Arbitrare”, which is competent to solve, among others, disputes involving industrial property rights, .pt domain names, trade names and corporate names. For more information, please see <https://www.arbitrare.pt/en>.

II. THE ANTI-COUNTERFEITING GROUP

5. The Portuguese Anti-counterfeiting Group was formally created in September 2010, with the aim of increasing the coordination of national authorities responsible for combating industrial property infringements and promoting cooperation between them and the private sector. Today it plays a key role in the combat against industrial property violations at the national level and is the primary platform for the exchange of best practices and expertise. It is also responsible for the representation of Portugal in the European Observatory on Infringements of IPRs.

6. The main advantage of the Anti-counterfeiting Group is the improved coordination of the agencies involved in the fight against industrial property crime and the effective dissemination of successful practices. The better coordination of all the enforcement authorities avoids the duplication of work and also promotes the cooperation between the public and the private sector. Another important advantage compared with the situation before is the improved harmonization between all agencies regarding data collection related to seizures, so that all of them use the same language when evidence on infringements of industrial property rights has to be delivered to policy makers.

7. The national Anti-counterfeiting Group is an initiative undertaken by INPI in cooperation with the enforcement authorities responsible for fighting counterfeiting, namely *Autoridade de Segurança Alimentar e Económica* (Economic and Food Safety Authority), *Autoridade Tributária e Alfandegária* (Customs Authority), *Polícia de Segurança Pública* (Urban Civil Police), *Guarda Nacional Republicana* (Rural and Borders Police), and *Polícia Judiciária* (Judiciary Police). It does not have an independent budget but the costs are equally shared by the participating entities.

8. For the first time, in March 2016, private sector representatives (right holders associations, such as Centromarca, União de Marcas and SNB-React) joined the Anti-counterfeiting Group with an observer status. Continued collaboration and partnership between the private sector and the Anti-counterfeiting Group will enable a more profitable exchange of information, allowing a more effective combat of industrial property violations. New activities and programs reaching a wider public are also expected to launch, raising awareness of the benefits of registering trademarks and designs. Private organizations have already expressed their interest in participating in public awareness campaigns targeting young people.

[Footnote continued from previous page]

- “counterfeiting, imitation or the illegal use of trademark” (Article 323 of the Industrial Property Code);
- the “sale, circulation or concealment of products or articles” (Article 324 of the Industrial Property Code); and
- the “violation and illegal use of an appellation of origin or geographic indication” (Article 325 of the Industrial Property Code).

9. Every year the Anti-counterfeiting Group organizes technical and high-level meetings with the purpose of analyzing the activities developed during the previous year and also of proposing activities to be organized in the following months. Typically, the high-level group holds formal meetings once a year, while the technical group organizes one to two ordinary meetings per year. Even though the formal meetings do not occur very often, there is frequent informal contact between the partners in order to manage the activities planned for a given year. In addition, extraordinary meetings are organized where appropriate, as was the case in 2014 on the occasion of the Champions League Final held in Lisbon. This specific meeting brought together members of the Anti-counterfeiting Group, the Union of European Football Associations (UEFA) and the Portuguese Football Federation, to define a specific action plan for the protection of industrial property rights.

10. In 2010, the Group launched the Anti-counterfeiting Portal (<http://anti-contrafacciao.com/>) which provides general information and statistics on counterfeiting and ways of legal protection. This website also offers an electronic complaint system, through which complaints can be made if industrial property rights, such as patents, trademarks, designs and appellations of origin, are violated. It allows the end user to quickly and easily report infringing activities by securely completing and submitting an electronic form. This service is available in Portuguese and English. The electronic complaint facility was a finalist in the United Nations Public Service Awards in 2011.

11. The Anti-counterfeiting Group publishes annual reports listing all actions undertaken in a given year, their impact, and the synergies that were created². In addition, relevant seizure data is also analyzed. For example, in the 2015 Annual Report:

- Clothing, footwear and accessories were the main categories of seized products (more than 50 per cent);
- The number of seized products within the Portuguese borders increased; with approximately three million, the total number of seized products in 2014 almost doubled compared to 2012;
- There was an increase in the number of seizures of foodstuffs, beverages and medicines. This should not be ignored and stresses the need to develop awareness campaigns in order to combat the dramatic threats posed to public health and safety by marketing and consuming such products.

12. Even though the creation of the Anti-counterfeiting Group improved the cooperation and coordination between the enforcement entities, much remains to be done in the area of public awareness campaigns. Nowadays, the biggest challenge is the dissemination of information about industrial property, particularly among young people and small and medium-sized enterprises (SMEs). The Anti-counterfeiting Group is therefore preparing specific actions dedicated to these groups in order to improve knowledge and awareness of industrial property rights.

² The 2015 Annual Report, the 2016 Action Plan and other useful information have been published online in Portuguese and English (see <http://anti-contrafacciao.com>).

III. CONCLUSION

13. INPI believes that, for companies to be successful in a highly competitive and globalized market, on the one hand, they need to fully utilize their creative and innovative potential. On the other hand, public authorities must provide them with an effective framework to protect their IPRs.

14. The importance of IP enforcement should not be understated, particularly considering that the credibility of the IP system depends on its ability to offer citizens and businesses the most appropriate mechanisms to effectively protect their IPRs.

THE LEGISLATIVE AND INSTITUTIONAL ARRANGEMENTS OF THE UNITED ARAB EMIRATES FOR THE PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

*Contribution prepared by Dr. Mohammad Mahmoud Al Kamali, Director, Institute of Training and Judicial Studies, Abu Dhabi, United Arab Emirates**

ABSTRACT

This document provides an overview of the legislative and institutional arrangements implemented by the United Arab Emirates (UAE) to address the protection and enforcement of intellectual property rights (IPRs). In particular, it explains the role of the various public authorities that are involved in the enforcement of intellectual property (IP), the establishment of Specialized Judicial Departments to hear IP matters in court, and the Institute of Training and Judicial Studies (ITJS) in providing capacity-building and training activities for members of the General Prosecution and specialized judges.

I. INTRODUCTION

1. Intellectual property rights (IPRs) are regarded as the most eminent form of property rights because they are associated with creations of the mind. Divided into two categories, namely industrial property and copyright, intellectual property (IP) protection is in fact protection for human creativity and innovation that is present in our daily lives.
2. The establishment of a legal framework for the protection of IPRs is a precondition for the creation of a secure national environment and stable commercial setting that attracts foreign investment and fosters economic development and international trade.
3. IP protection enables right holders to exploit the product of their intellect and to prevent third parties from using it without their consent. The unauthorized use of IP may constitute an infringement of both economic rights – which have a material value – and moral rights – meaning the right to claim authorship in a work.
4. In order to provide effective IPR protection, the United Arab Emirates (UAE) has established national laws and regulations and acceded to relevant international treaties. In the UAE, IPR infringement is a public crime¹ that may be subject to penal action by the General Prosecutor. A right holder may also initiate criminal proceedings in relation to an infringement or independent civil proceedings to claim damages.
5. The present document addresses some of the factors which contribute to capacity building in IPR protection in the UAE.

* The views expressed in this document are those of the author and not necessarily those of the Secretariat or of the Member States of WIPO.

¹ There are criminal provisions in the legislations of the United Arab Emirates relating to trademarks, copyright and patents.

II. IP LEGISLATION

6. In line with the *nulla poena sine lege* principle, IP infringements can only be remedied if countries have specific laws aimed at protecting IPRs. Laws that are too general in scope, such as the Penal Code, may not be sufficient to protect IPRs. While these laws may provide some limited protection for certain aspects of IPRs, they do not adequately address all of the details. Where there are not sufficiently specific laws in place, this may result in offenders escaping justice and right holders not obtaining adequate remedies.

7. From a legal perspective, appropriate IP laws may provide adequate protection for right holders against the infringement of their IPRs in cases where there has been use without prior consent. From an economic perspective, such rights also allow creators and innovators to exploit their works, thereby providing an incentive for creativity and innovation. If IPRs are not adequately protected, this will not only hamper development, but it would also encourage illegal commerce in counterfeit and pirated goods at the expense of right holders and consumers.

8. In addition, the presence of IP legislation can be used as an indicator to measure the progress of development in a country. IP protection has a positive impact on economic, social and cultural development. It is a precondition for social advancement and welfare, as well as sustainable scientific development and innovation.

9. The IP legislative framework also provides a predictable setting for right holders seeking to protect, enforce or deal with their IPRs. Some examples include: the use of registration as a requirement for the protection of trademarks and patents; procedural requirements relating to the transfer and assignment of rights; and the prescribed term of protection.

III. PUBLIC AUTHORITIES

A. CUSTOMS DEPARTMENTS

10. Customs are at the forefront of IPR protection. Thanks to its Customs Authority, the UAE can enforce IPRs within its security and economic duties. Under its customs laws, customs officials are responsible for direct and sovereign control of the entry, transit and exit of goods at customs ports (marine, land and air ports of entry) in the UAE.

11. By preventing the entry or transit of IP-infringing goods, the UAE saves time and effort that would have otherwise been spent by other government authorities. Similarly, by preventing the exit of infringing goods, the UAE preserves its reputation for not allowing the circulation of infringing goods. This serves as a positive illustration of the fight against IPR infringement.

12. Uncovering infringing goods at entry or exit points requires the development of customs laws which provide for IPR protection and covers the deployment of staff at customs control points. Moreover, customs officers must have a good understanding of IP legislation. Practical training on procedures for the confiscation of infringing goods is also necessary. Customs officers should be able to uncover offenders trying to circumvent control and smuggle such goods in or out of the country.

13. It is important for customs inspectors to have a good understanding of IP legislation prior to their engagement and to be provided with continuous IP legislation training during their engagement, in addition to training on inspection techniques in line with international best practices.

14. In the UAE, customs currently operate under the authority of respective local governments, with some variation in the practices adopted among the different Emirates. Therefore, it is of the utmost importance to provide a uniform standard of training for customs officers in all Emirates through the Federal Customs Authority (FCA) and to harmonize various practices that are used in confiscation procedures.

B. DEPARTMENTS OF ECONOMIC DEVELOPMENT

15. In the UAE, each Department of Economic Development (DED) is responsible for delivering trade licenses in the respective Emirates. These Departments, like the Customs Departments, also operate under the authority of the respective local government at Emirate level.

16. It is noteworthy that DEDs in the UAE attach great importance to IP. Several IP Centers have been established that are entrusted with the organization of regular IP training courses and workshops for their staff as well as awareness-raising seminars on IP for the public.

17. It is important to provide appropriate training on IP legislation for DED staff in the different Emirates, as well as continuous legal training and training on procedures for the collection of evidence in line with international best practices. Training for DED staff from all of the Emirates should ideally be carried out in cooperation with the Ministry of Economy, to ensure the harmonization of procedures and work methods.

C. POLICE DEPARTMENT – ECONOMIC CRIME SECTIONS

18. Economic Crime Sections (ECS) were established in each of the Emirates by the UAE Police. Economic crimes include IPR infringements. Selected from relevant disciplines, ECS staff and officers benefit from training opportunities and participation in workshops and seminars. The ECS facilitates cooperation between DEDs and Public Prosecutions. In addition, they provide assistance to the Public Prosecutions in relation to inspections, investigations and the collection of evidence.

19. Given the important role that ECS staff and officers provide, it is essential that they be provided with appropriate training on IP legislation as well as on the procedures for the collection of evidence, identifying infringing acts, preserving evidence and enforcing IP regulations.

D. GENERAL PROSECUTION

20. The General Prosecution represents society in criminal cases and decides whether or not to bring court proceedings against suspected criminals. Due to the increasing complexity of cases, many countries have established “specialized prosecutions”, where prosecutors have specialized training and competencies in various fields of expertise. Some examples of specialized prosecutions include, *inter alia*, Juvenile Prosecution, Drug Prosecution, Passport Prosecution, Road Traffic Prosecution, Civil Registry Prosecution and IP Prosecution.

21. When a specialized IP Prosecution is established, it is necessary to provide the prosecution staff with specialized training, through specialized courses, scientific workshops and seminars, both locally and abroad.

22. In the same way that Judicial Departments with specialized judges have been established to consider IP cases in the UAE, IP Prosecutions should be established to ensure the effective processing of IP cases by the General Prosecution.

23. Thanks to its wide-ranging IP expertise, the World Intellectual Property Organization (WIPO) is best placed to play a prominent role in improving the skills of members of the prosecution and to identify specialized prosecutors from other countries. This could be achieved through the delivery of specialized training courses on the various IP fields and the development of practical guides for prosecutors on IP case investigations. This would allow the IP prosecution to better decide whether or not to refer a particular case to the specialized court.

E. SPECIALIZED COURT, SPECIALIZED JUDGES

24. While the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) of the World Trade Organization (WTO) does not require Members to do so, some countries have created specialized courts to consider IP cases.

25. As an alternative to establishing specialized courts, the current trend in many countries, including in the UAE, is to identify specialized judges from various fields of expertise working in special court departments. In February 2016, the UAE Minister of Justice issued Decree No. 137 of 2016, ordering the establishment of Specialized Judicial Departments to hear IPR cases in courts.

26. The Abu Dhabi Federal Court of First Instance and the Umm Al-Quwain Federal Court of First Instance were the first to create such departments, followed by other courts. Currently, courts have specialized Judicial Departments to hear criminal and administrative cases. Judges who are responsible for this mission require specialized education and continuous training.

27. As a specialized IP organization, WIPO plays a pivotal role in training judges and improving their skills. Much can also be learnt from other countries which have made significant progress in this area.

IV. JOINT EVENTS

28. The organization of joint events for all the above-mentioned authorities plays an important role in identifying and bridging the gaps in the law that might be exploited by potential infringers.

V. INSTITUTE OF TRAINING AND JUDICIAL STUDIES

29. The Institute of Training and Judicial Studies (ITJS) plays a prominent role in educating and training judges and members of the General Prosecution in the various legal fields, including IP. This role can be enhanced further by increasing the number of training hours provided and through the organization of workshops for members of the General Prosecution and specialized judges.

30. The ITJS annual program currently includes a number of training workshops and seminars on IP, which are organized in cooperation with authorities and organizations concerned with IP issues, such as the Ministry of Economy, WIPO and the United States Patent and Trademark Office (USPTO). Private companies such as Microsoft are also involved, together with associations such as the Emirates Intellectual Property Association (EIPA) and the Brand

Owners' Protection Group (BPG). However, these activities alone are not sufficient to train prosecutors or specialized judges.

31. The development of a standard curriculum in cooperation with WIPO would further strengthen the role of ITJS in training members of the prosecution and specialized judges, and providing ongoing training in IP matters.

32. In the future, ITJS will look at inviting judges who are competent in IP cases for further training. The Institute will also look into coordinating efforts with the Judicial Inspection Department (JID) on the training judges and members of the prosecution are required to undertake prior to their designation to hear IP cases. In addition, it would be useful for a case law compendium to be compiled by the courts, especially supreme courts, and made available to judges and members of the prosecution. ITJS also believes that more workshops and panel discussions on emerging IP issues should be organized.

33. Owing to the convenient geographical location of the UAE in the Middle East in particular, and in relation to Arab countries in general, and the ease of access provided by the significant number of inbound and outbound flights, ITJS would be interested in cooperating further with WIPO in holding regional training programs for members of the Judiciary.

34. ITJS has organized many events recently, including two programs on Trademarks and Copyright and Related Rights that were organized in Abu Dhabi in December 2015 and May 2016, respectively, with participants from the Judiciary of States of the Gulf Cooperation Council (GCC) and some Arab countries. Held with the financial support and cooperation of WIPO, in collaboration with the *École Nationale de la Magistrature* of France and the French Embassy, the two events were praised for their success and high level of participation.

THE ROLE OF THE NATIONAL INTELLECTUAL PROPERTY RIGHTS COORDINATION CENTER IN ENFORCING INTELLECTUAL PROPERTY IN THE UNITED STATES OF AMERICA

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ABSTRACT

The United States (U.S.) Immigration and Customs Enforcement's (ICE) Homeland Security Investigations (HSI) led National Intellectual Property Rights Coordination Center (IPR Center) stands at the forefront of the U.S. Government's response to global intellectual property (IP) theft and enforcement of its international trade laws. The mission of the IPR Center is to ensure national security by protecting the public's health and safety, the U.S. economy and service members, and to stop predatory and unfair trade practices that threaten the global economy. To accomplish this goal, the IPR Center brings together 23 partner agencies, consisting of 19 key federal agencies, the International Criminal Police Organization (INTERPOL), the European Police Office (EUROPOL), and the Governments of Canada and Mexico in a task-force setting. The IPR Center has developed comprehensive operations and works with internal and external agencies in order to conduct effective IP enforcement to defend the economy, protect consumers and repress criminal organizations.

I. INTRODUCTION

1. The negative impacts of intellectual property (IP) theft are not immediately apparent, but they are significant, and the crime can wreak havoc on the United States (U.S.) economy, threaten the health and safety of American consumers and fund greater forms of violent and illegal activities. In response to these dangerous effects, and to improve collaboration among federal agencies involved in the fight against IP rights (IPR) violations, the Government created the National Intellectual Property Rights Coordination Center (IPR Center) in 2000.

II. THE IPR CENTER

2. The IPR Center is a joint task-force organization led by U.S. Immigration and Customs Enforcement's (ICE) Homeland Security Investigations (HSI) and made up of 23 partner agencies, consisting of 19 federal agencies and four international agencies, including the International Criminal Police Organization (INTERPOL), the European Police Office EUROPOL, and law-enforcement authorities from the Governments of Mexico and Canada. An officer from U.S. Customs and Border Protection (CBP) and an agent from the Federal Bureau of Investigation (FBI) both hold a deputy director position at the center. This task-force structure enables the IPR Center to effectively leverage the resources, skills and authorities of each partner agency and provide a comprehensive response to traditional customs fraud and the trafficking of various types of contraband.

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A. MISSION

3. The overall defined mission of the IPR Center is to ensure national security by protecting the public's health and safety, the U.S. economy and service members, and by combating predatory and unfair trade practices that threaten the global economy. It accomplishes that mission through a multi-layered approach that includes investigations to identify and dismantle criminal organizations; interdiction of contraband through targeted action and inspections to keep illegal goods out of the U.S. supply chain; and outreach and training with domestic and international law enforcement to strengthen capabilities worldwide. This strategic approach allows the Government to immediately assign resources to prevent tragic accidents related to the proliferation of counterfeit pharmaceuticals; investigate counterfeiting linked to violent organized criminal groups; and protect an industry workforce responsible for developing cutting-edge technology.

B. STRUCTURE

4. HSI has three distinct units located at the IPR Center: the IP, the Trade Enforcement, and the Policy and Training Unit. The IP Unit, comprised of special agents and analysts, coordinates efforts of the IPR Center with field personnel to facilitate successful investigations of criminal organizations involved in IP crime. This unit also oversees enforcement operations in response to new and emerging IP threats, including the increasing health and safety risks posed by counterfeit products. In addition, the IP Unit oversees the IPR Center's Intelligence Section. This Section de-conflicts incoming leads with other agencies and provides leads to HSI field offices to facilitate their investigations. The FBI also houses their IP Headquarters Unit at the IPR Center. This Unit has programmatic oversight over the FBI's dedicated IPR field agents and has an operational component. The FBI's priorities include counterfeit goods that pose a health and safety threat and theft of trade secrets.

5. The IPR Center encompasses more than just IP enforcement. Its Trade Enforcement Unit also manages and supports the ICE trade fraud program, focusing on commercial importations involving false statements and deceptive business practices. The IPR Center has recognized that those criminals engaged in IPR violations are often involved in other types of commercial fraud violations. By combining these programs at the IPR Center, ICE is able to take a comprehensive approach to addressing these vulnerabilities. Fraud investigations are important components of an overall trade strategy whereby ICE and CBP concentrate on enforcing revenue protection and, increasingly, non-revenue protection laws and regulations. Programmatic areas of responsibility include: health and safety crimes, in-bond diversion, tobacco smuggling, forced child labor, textiles, anti-dumping and trade agreement enforcement.

6. The Policy and Training Unit is the public face of the IPR Center. As such, its responsibilities include building and maintaining partnerships with industry and law enforcement, coordinating domestic and international capacity building programs, and raising public awareness. IPR Center personnel frequently participate as IP enforcement experts in capacity-building programs sponsored by the Department of State, the United States Patent and Trademark Office (USPTO) Global IP Academy, the Department of Justice, INTERPOL and the World Customs Organization. The Unit develops policy and guidance for the IPR Center and its operations, and coordinates departmental, congressional and inter-agency requests involving IP-related matters. The Unit's Policy Section also provides input on domestic and international policy through their work with the Office of the IP Enforcement Coordinator, the Special 301 Sub-Committee and numerous international treaty committees and multilateral working groups.

III. IPR CENTER ACTIVITIES

A. IP-RELATED ADMINISTRATIVE AND OPERATIONAL EFFORTS

7. The IPR Center places paramount emphasis on counterfeit goods most likely to threaten the health and safety of consumers. The proliferation of counterfeit pharmaceuticals in the Northern California area was linked to several deaths in 2015; counterfeit electrical components destined to be used on nuclear submarines were sold to key defense contractors; and a counterfeit performance bicycle broke under the stress of common usage, causing major injuries to the rider. Through the development of enhanced administrative and operational efforts, the IPR Center can limit the destructive effects of counterfeit goods.
8. One important administrative initiative currently ongoing at the IPR Center is the specific documentation of serious injuries, links to criminal organizations, and impacts to businesses and the economy, all associated with counterfeiting. The Food and Drug Administration (FDA) has shared examples of individuals immediately developing a rash after using counterfeit cosmetics. There are known instances of teenagers experiencing vision loss after using counterfeit decorative contact lenses. The Los Angeles Police Department has evidence linking pirated goods to violent street gangs. The IPR Center has also received confirmation that a group in Michigan was selling counterfeit pharmaceuticals to fund terrorist activities in the Middle East. Presenting specific cases to consumers, domestic and international law enforcement and the legal community will improve the IPR Center's educational outreach campaign.
9. Proactively adapting to new trends in illegal activities, the IPR Center has developed a robust operational portfolio. Six major efforts target the illegal importation of counterfeit goods destined for the military, counterfeit pharmaceuticals, counterfeit healthcare items and beauty supplies and counterfeit automotive parts, as well as copyright infringing websites and fake sports-related merchandise. In order to successfully execute these operations, the IPR Center works with several different external agencies, including the Department of Defense, the FDA, representatives from the automotive sector and major sporting associations as well as state, local and international law enforcement. At the end of each fiscal year, the arrests, convictions and seizures associated with each operation are calculated and provided to CBP to inform their annual fiscal year seizure statistics report.
10. On July 18, 2007, President Bush issued an executive order establishing an inter-agency working group on import safety to address the dangers found in imported apparel, pet food ingredients, toys, seafood and other consumer products. To address the goals and objectives identified by the working group, the IPR Center developed and implemented Operation "Guardian", a multi-agency umbrella program designed to combat the importation and trafficking of substandard, tainted and counterfeit products that pose a health and safety risk to consumers. The collaborative work of Operation "Guardian" has led to the seizure of commodities such as aircraft and automobile parts, pharmaceuticals, personal-care products, electrical devices and food products.
11. In March 2014, HSI participated in dismantling a massive multimillion-dollar ring that sold counterfeit health and beauty items like lip balm, baby oil, petroleum jelly, and sanitary pads. Over the last two years, the number of personal care products seized – including shampoo, deodorant, and lotion – has tripled. In response to those developments, the IPR Center launched Operation "Plastic Beauty" in 2015 to target these types of items. As new counterfeiting patterns and trends emerge, the IPR Center will aggressively address them with strategic enforcement techniques.

B. TRADE ENFORCEMENT OPERATIONS

12. On January 18, 2012, HSI and CBP Headquarters issued a Commercial Fraud Working Group Field Evaluation and Implementation Plan. The objective of the Joint Commercial Fraud Enforcement Improvement Plan was to establish procedures and guidelines between HSI and CBP to facilitate and expedite the exchange of commercial fraud information between the agencies, thus leading to successful criminal prosecutions and civil actions for trade violations. One of the recommendations was to establish integrated commercial trade fraud units at the field level. Many of the recommendations in the paper were met by integrating the HSI and CBP commercial fraud units into Trade Enforcement Coordination Centers (TECCs). TECCs promote information sharing among all entities involved in trade enforcement, assist in proactively identifying trade schemes, and foster complete threat assessments. They further help create an integrated team, working side-by-side on a daily basis, and reinforce the already-established HSI-CBP partnership.

13. The TECCs combine resources by co-locating HSI and CBP personnel in close proximity to the customs examination area to identify and effectively combat illicit trade. TECCs ensure joint CBP and HSI oversight and prioritization of the enforcement and interdiction process in the local area and HSI involvement early during the importation or exportation phase and/or during the interdiction process. Fraud schemes discovered by the TECCs include illegal transshipment through third countries, falsifying the country of origin, exploitation of the in-bond system and stealing the identity of a legitimate business or importer. The TECCs enable HSI and CBP to present a united front and a more complete case analysis for the presentation of cases to the United States Attorney's Offices.

IV. COLLABORATION BETWEEN THE IPR CENTER AND THE INDUSTRY AND INTERNATIONAL LAW ENFORCEMENT AGENCIES

14. The IPR Center will continue to strengthen its collaboration with industry and international law enforcement. No organization is more equipped to protect copyrights and trademarks, and no organization has more intelligence identifying the location of counterfeiters than the IPR Center. The outreach and intelligence sharing with industry is a major resource that must be leveraged to develop strong investigations. Interaction with industry makes enforcement agents more effective and offers innumerable contributions to investigations. Representatives from all industry sectors have a standing invitation to visit the IPR Center, with the purpose of starting a productive dialog about preventing IP theft.

15. The IPR Center is committed to collaborating with international law enforcement on worldwide anti-counterfeiting operations. In June 2015, it coordinated with INTERPOL to support Operation "Pangea", an effort that brought together 115 countries and 236 agencies to combat the sale of illegal medicines online. Last year's operation led to the seizure of over 20 million items of counterfeit and illicit medicines worth an estimated USD 81 million. It also resulted in the arrests of 156 individuals and additional pieces of information supporting 429 investigations. The IPR Center will continue to support Project "Transatlantic", as part of Operation "In Our Sites", an HSI and Europol-led effort which teamed industry with law enforcement agencies across 27 countries to shut down 37,479 domain names in fiscal year 2015 that were illegally selling counterfeit merchandise online to unsuspecting consumers.

V. CONCLUSION

16. Each year, more than 11 million maritime containers arrive at U.S. seaports. At land borders, another 10 million arrive by truck and three million by rail. An additional quarter billion more cargo, postal, and express consignment packages arrive through air travel. The agencies within DHS remain vigilant in targeting shipments posing a risk to the American people. In 2015, the number of IPR seizures totaled 28,865 with an estimated value of USD 1.35 billion. IPR Center-related enforcement efforts in 2015 led to 538 arrests, with 339 indictments and 357 convictions. The IPR Center is committed to supporting IP enforcement that protects consumers and the U.S. economy while dismantling criminal distribution networks.

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