

Advisory Committee on Enforcement

Ninth Session

Geneva, March 3 to 5, 2014

FUTURE WORK OF THE ADVISORY COMMITTEE ON ENFORCEMENT

prepared by the Secretariat

1. In its first session, held in 2003, the Advisory Committee on Enforcement (ACE) agreed on the principle of a thematic approach to its work, and the inclusion of expert presentations in the respective sessions.¹ For the subsequent sessions, the following work programs were agreed:

- 2nd session of the ACE: ‘The role of the judiciary and quasi-judicial authorities, as well as of the prosecution, in enforcement activities (including related issues such as litigation costs)’;²
- 3rd session of the ACE: ‘Education and awareness-raising, including training, concerning all factors relating to enforcement, primarily those that are indicated in requests for assistance by Member States’;³
- 4th session of the ACE: ‘Coordination and cooperation at the international, regional and national levels in the field of enforcement’;⁴
- 5th session of the ACE: ‘Contribution of, and cost to, right holders in enforcement, taking into account Recommendation No. 45 of the WIPO Development Agenda’;⁵

¹ Paragraph 16 of document WIPO/ACE/1/7 Rev. at http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=17452
² Meeting documents at http://www.wipo.int/meetings/en/details.jsp?meeting_id=5662
³ Meeting documents at http://www.wipo.int/meetings/en/details.jsp?meeting_id=9964
⁴ Meeting documents at http://www.wipo.int/meetings/en/details.jsp?meeting_id=12802
⁵ Meeting documents at http://www.wipo.int/meetings/en/details.jsp?meeting_id=17445

– 6th, 7th and 8th sessions of the ACE: ‘Developing on the substantive study contained in WIPO/ACE/5/6, analyze and discuss IPRs infringements in all its complexities by asking the Secretariat to undertake:

1. A literature review of methodologies and gaps in the existing studies (6th session only);
2. Identification of different types of infractions and motivations for IPR infringements, taking into account social, economic and technological variables and different levels of development;
3. Targeted studies with an aim to developing analytical methodologies that measure the social, economic and commercial impact of counterfeiting and piracy on societies taking into account the diversity of economic and social realities, as well as different stages of development; and
4. Analysis of various efforts, alternate models and other possible options from a socio-economic welfare perspective to address the counterfeiting and piracy challenges’.⁶

– 9th session of the ACE:

1. ‘Practices and operation of alternative dispute resolution systems in IP areas’;
2. ‘Preventive actions, measures or successful experiences to complement ongoing enforcement measures with a view to reducing the size of the market for pirated or counterfeited goods’.⁷

2. Paragraph 34 of the Draft Summary by the Chair⁸ of the 8th session lists the two proposals that remain on the table, namely: ‘Review of awareness building activities as a means of building respect for IP rights, especially among school age children and students’ and ‘Review of possibilities to intensify and improve WIPO’s enforcement-related technical assistance, including legislative assistance’.

3. On February 24, 2014, the Secretariat received a joint proposal by Poland, the United Kingdom and the United States of America for the future work of the ACE, for consideration at the ninth session of the Committee. This proposal is reproduced in the Annex to this document.

4. It is also recalled that the Secretariat prepared, for the 8th session of the ACE, a compilation of future work proposals made from the second through the seventh sessions of the ACE, with an informal assessment of the extent to which they have been addressed through the ACE.⁹

5. *The Committee is invited to take note of the content of this document and its Annex.*

[Annex follows]

⁶ Meeting documents at http://www.wipo.int/meetings/en/details.jsp?meeting_id=20199

⁷ Meeting documents at http://www.wipo.int/meetings/en/details.jsp?meeting_id=30137

⁸ WIPO/ACE/8/12 PROV. on “Draft Summary by the Chair” at http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=227425

⁹ WIPO/ACE/8/3 on “Analysis of Proposals for the Future Work of the ACE” at http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=216331

The Specialization of the Judiciary and Intellectual Property Courts

Proposal by Poland, United Kingdom and United States of America

1. With regard to developing a work program for the tenth session of the Advisory Committee on Enforcement (ACE), Poland, the United Kingdom and the United States propose the theme of specialization of the judiciary and intellectual property courts. The theme is a natural complement to alternative dispute resolution, one of the themes of the current ninth session.
2. The issue of specialized judges and intellectual property courts has been discussed in several past sessions, which demonstrates that there is an ongoing interest in this area that is of particular relevance to intellectual property enforcement.
3. In preparation for the Consultation Meeting on Enforcement held in 2002, the WIPO Secretariat submitted a request for information from Member States, asking they “[i]dentify effective or best practices for enforcement of industrial property in Member States, in particular, less costly and time-consuming practices for effectively enforcing rights” (paragraph 4 of document WIPO/CME/3; WIPO/ACE/1/3, Annex). As noted in the Secretariat’s report of that meeting (“Synthesis of Issues Concerning Difficulties and Practices in the Field of Enforcement”), a large number of the responses favored either establishing specialized intellectual property courts or, alternatively, specialization of judges through training (paragraph 70 of document WIPO/CME/3; WIPO/ACE/1/3, Annex).
4. In 2002, the Secretariat also requested information to assist the Advisory Committee on Enforcement of Industrial Property Rights (ACE/IP) and the Advisory Committee on Management and Enforcement of Copyright and Related Rights in Global Information Networks (ACMEC), which were the progenitor committees of the ACE, to identify issues for discussion and areas where international cooperation in the framework of WIPO appears to be both necessary and realistically achievable (paragraph 4 of document WIPO/CME/2 Rev.). According to the Secretariat’s report, the establishment of specialized courts was raised as a “possible solution to achieving cost effective, efficient and consistent decision making” (paragraph 19 “Creation of Specialized Courts” of document WIPO/CME/2 Rev.).
5. At the second session of the ACE held in 2004, the Committee noted the particular role of the judiciary in the enforcement of intellectual property rights (paragraph 7 of document WIPO/ACE/2/13). The Committee also discussed the issue of specialization of the judiciary and “particular interest was expressed in the different ways in which Member States address this matter” (paragraph 8 of document WIPO/ACE/2/13). Some Member States discussed the necessity of having a specialized judiciary to effectively and cost-efficiently adjudicate upon intellectual property disputes (paragraph 8 of document WIPO/ACE/2/13). It was also suggested that specialization of the judiciary could also be achieved by concentrating intellectual property litigation within existing judicial structures (paragraph 8 of document WIPO/ACE/2/13).
6. At the fourth session of the ACE held in 2007, questions were raised as to “the specialization of the judiciary in both criminal and civil proceedings” (paragraph 9 of document WIPO/ACE/4/10).
7. Member States have been active in either establishing a specialized judiciary or in creating intellectual property courts. Such practices may lead to significant benefits to enforcement such as: improvements in judicial efficiency decision-making, increased consistency and predictability of case outcomes, and reducing costs to enforcement systems. Accordingly, we believe it is timely for the ACE to focus on this theme, as it would be valuable to have an interchange regarding Member States’ efforts in this area for the tenth session.

[End of annex and document]