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THE CAPACITY-BUILDING AND TRAINING ACTIVITIES OF WIPO IN THE AREA OF BUILDING RESPECT FOR IP

Document prepared by the Secretariat

ABSTRACT

This document highlights the main features of the capacity-building activities in the area of Building Respect for Intellectual Property (IP) undertaken by the Secretariat of the World Intellectual Property Organization (WIPO) through its Program 17 “Building Respect for IP”. It aims to provide an overview of the framework, content and format of these activities, which are carried out in accordance with the mandate of the Advisory Committee on Enforcement (ACE), in line with Expected Result III.2 (“Enhanced human resource capacities able to deal with the broad range of requirements for the effective use of IP for development in developing countries, least developed countries (LDCs) and countries with economies in transition”) as defined in WIPO’s Program and Budget, and within the framework of Recommendation 45 of the WIPO Development Agenda.

I. THE FRAMEWORK

1. It is widely acknowledged that it is only insofar as intellectual property (IP) rights are understood, respected and, where need be, enforced that IP protection can work properly for the benefit of right holders and the public at large. At the 2008 General Assembly of the World Intellectual Property Organization (WIPO), Member States decided to adopt WIPO’s Strategic Goal VI “International Cooperation on Building Respect for IP”. It is a cross-cutting goal that requires an inclusive and integrated approach, much broader than the concept of enforcement

of IP rights. It calls for the creation of an enabling environment that promotes respect for IP in a sustainable manner, in the spirit of Recommendation 45 of the Development Agenda (DA)¹.

2. WIPO's Program 17 ("Building Respect for IP") is the main Program tasked with implementing Strategic Goal VI. One of the activities of Program 17, in line with the mandate of the Advisory Committee on Enforcement (ACE)² and Expected Result III.2 ("Enhanced human resource capacities able to deal with the broad range of requirements for the effective use of IP for development in developing countries, least developed countries (LDCs) and countries with economies in transition") as defined in WIPO's Program and Budget, is to assist Member States by providing capacity-building activities on Building Respect for IP³. To this end, Program 17, in close cooperation with the Regional Bureaus and the Department for the Transition and Developed Countries, regularly organizes capacity-building and training activities on Building Respect for IP at the request of, and in collaboration with, WIPO's Member States – particularly LDCs, developing countries and countries in transition – or regional intergovernmental organizations (such as the African Regional Industrial Property Organization (ARIPO) and the African Intellectual Property Organization (OAPI)). These capacity-building and training activities take the form of workshops, seminars, and meetings organized at national, sub-regional or regional levels⁴. The most recent activities undertaken are reported in "Recent Activities of WIPO in the Field of Building Respect for Intellectual Property" (document ACE/11/2). The full list of activities and the programs are available on the WIPO website at: <http://www.wipo.int/enforcement/en/activities/current.html>.

3. The present document aims to provide further information and insight as to the capacity-building activities organized within this framework. It focuses on activities held in the biennium 2014-2015 and in 2016 up to July 15, 2016⁵. It contains both statistical data and explanations related to the preparation and content of these activities. To clarify, the capacity-building activities discussed in the present document only relate to those organized by WIPO, the content of which is primarily focused on the topic of Building Respect for IP, and the programs for which are designed by Program 17 (in cooperation with the requesting Member State or regional intergovernmental organization). This document does not deal with capacity-building activities (i) organized by other intergovernmental organizations (IGOs) where Program 17 is merely invited to participate and make presentations without being a co-organizer, or (ii) where the issues pertaining to the building of respect for IP are not the core topic of the activity but rather one of a number of IP issues dealt with. Therefore, activities such as the WIPO-World Trade Organization (WTO) course for IP teachers and the WIPO-WTO course for government officials are not addressed here. These two last categories of activity are reported in the list of recent activities⁶.

¹ See <http://www.wipo.int/ip-development/en/agenda/recommendations.html#f>.

² See paragraph 114(ii) of the Report of the 28 session of the WIPO General Assembly (http://www.wipo.int/edocs/mdocs/govbody/en/wo_ga_28/wo_ga_28_7.pdf).

³ See Program and Budget 2016/17, pp. 115 *et seq.*, available at: http://www.wipo.int/export/sites/www/about-wipo/en/budget/pdf/budget_2016_2017.pdf. For the previous biennium, see Program and Budget 2014-2015, pp. 129 *et seq.*, available at: http://www.wipo.int/export/sites/www/about-wipo/en/budget/pdf/budget_2014_2015.pdf.

⁴ The list of capacity-building activities, continuously updated, and the programs pertaining to each of these activities may be consulted at: <http://www.wipo.int/enforcement/en/activities/current.html>.

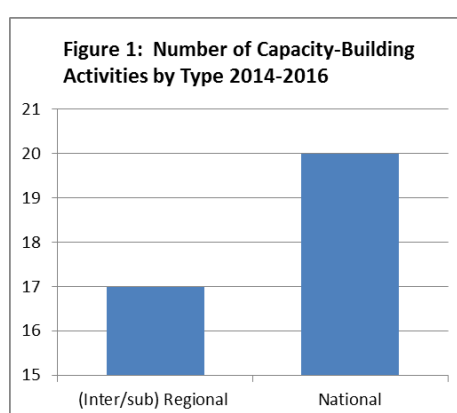
⁵ This document takes into account the capacity-building activities scheduled up to July 15, 2016, for the purposes of the statistics contained in Figures 1 to 4.

⁶ See the aforementioned document ACE/11/2 and the list of activities available at: <http://www.wipo.int/enforcement/en/activities/current.html>.

II. THE SCOPE OF CAPACITY-BUILDING ACTIVITIES

4. There is no “one-size-fits-all” approach to capacity-building activities. The program for each of these activities – irrespective of whether the focus is on IP enforcement in light of Part III of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement or on preventive measures, including awareness-raising – is developed in close cooperation with the country or countries involved. The programs are adapted to the prevailing social, economic and legal circumstances, as well as to the composition and the level of IP knowledge of the audience. Speakers usually include international experts, national experts from the country or countries involved, and WIPO staff members.

5. The capacity-building activities in the area of Building Respect for IP are only organized⁷ at the request of the Member States or regional intergovernmental organizations such as ARIPO or OAPI. These activities are national, (sub)regional or interregional, according to the requests (see Figure 1).

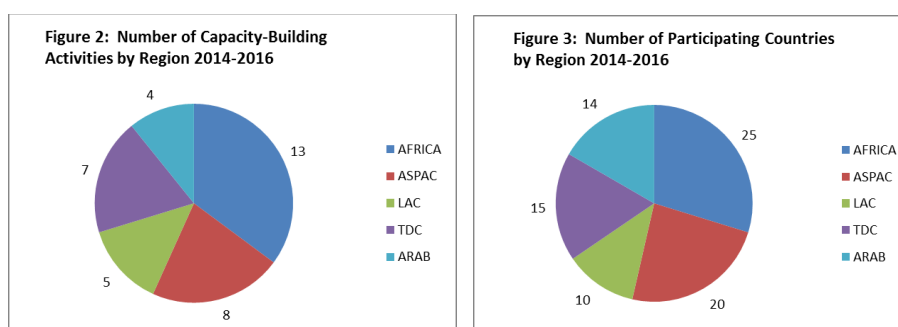


6. Training activities are planned well in advance and included in the yearly Workplan of Program 17, in close coordination and cooperation with the Regional Bureaus of the Secretariat.

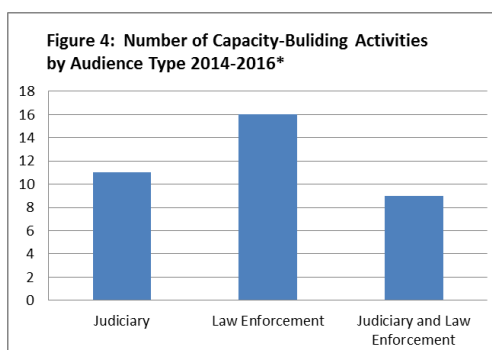
7. Due to human and financial constraints, Program 17 is obliged to prioritize the number of capacity-building events it can deliver in a year. The selection is made in close coordination with the Regional Bureaus and the requesting Member States. Various elements are taken into consideration in prioritizing the requests, such as the justification for the activity that is provided by the requesting Member State and the political will and level of commitment; the date of the last capacity-building event on Building Respect for IP that was held in the requesting country, if any (in order to prioritize Member States which have not benefited from such activities in the recent past); the analysis of the national legislation (if the relevant legislation is in the process of being adopted or amended, there may be little use in having a capacity-building event before the legislative process is completed); and the capacity and readiness of relevant training institutes, if any, to participate in the event.

⁷ Some of these activities are financed by Funds in Trust (FIT) from Member States, managed by WIPO. Capacity-building activities financed through a FIT are co-organized not only with the national or regional authorities requesting the activity but also with the public authorities from the Member State having constituted the FIT. In this case, the WIPO Secretariat remains principally responsible for the substance of the program, with a view to the achievement of Strategic Goal VI.

8. For the period under consideration, the total number of capacity-building activities was 37 and the total number of participating countries was 84. The number of activities (see Figure 2) and participating countries (see Figure 3) per region⁸ were as follows:



9. Depending on the nature of the request of the Member State or the regional intergovernmental organization concerned, the audience and structure of the program may vary. In a typical case where there is a capacity-building event focused on enforcement, the audience may consist of judges, prosecutors or law enforcement officers (customs, police, market inspectorate) (see Figure 4). As agreed with the requesting Member State, the activity may or may not be open to members of the legal profession. In line with the Evaluation Report on Strategic Goal VI of October 2014⁹, Program 17 aims at prioritizing the strengthening of training institutions (police academies, judicial training institutes, etc.). As a result, wherever possible, these training institutes are involved in capacity-building activities.



*See paragraph 16: An additional Workshop on awareness raising and communications was held in Cairo, Egypt.

III. THE CONTENT OF THE CAPACITY-BUILDING ACTIVITIES

10. Each program is tailored to meet the demands and needs of the requesting Member State. However, there is a typical array of subject-matter which is addressed in such capacity-building activities. The main themes and topics which are regularly dealt with are indicated below, with a short explanation of the content covered.

⁸ The relevant regions are: Africa, the Arab region, Asia and the Pacific (ASPAC), Latin America and the Caribbean (LAC), and Transition and Developed Countries (TDC) which include countries with economies in transition.

⁹ Internal Oversight Divisions' Evaluation Report on "Strategic Goal VI: International Cooperation on Building Respect for IP"; available at: http://www.wipo.int/export/sites/www/about-wipo/en/oversight/iaod/evaluation/pdf/evaluation_strategic_goal_vi.pdf.

A. TOPICS INSPIRED BY THE WORK OF THE ACE

11. In all capacity-building activities, the program starts by specifically addressing Strategic Goal VI of WIPO and the concept of Building Respect for IP. A representative of WIPO then contextualizes the phenomenon of the infringements of IP rights – and in particular trademark counterfeiting and copyright piracy – within the broader context of social and economic development, and emphasizes that efforts towards building respect for IP are guided by Recommendation 45 of WIPO's DA.

12. To this end the work programs of the ACE sessions, and the information and national experiences exchanged within the ACE framework, serve as an important pillar in guiding the substantive content of the capacity-building programs. Dialogue at previous sessions of the ACE has indicated that attaining an appropriate balance in building respect for IP policy, that combines repressive and preventive measures, is critical to achieving outcomes that respond to the diverse needs and interests of Member States and stakeholders to strengthen the IP-legitimate market and to improve IP-compliance. This integrated approach is equally reflected in the design of capacity-building programs, where the following items with direct links with ACE work programs may be discerned: the need to take into account the prevailing socio-economic circumstances in the country or countries concerned¹⁰, including consumer perceptions and attitudes¹¹; the balance between the interests of rights holders and the public interest¹²; the need to complement enforcement efforts with alternate models and other possible options from a socio-economic welfare perspective, including efforts aimed at awareness-raising¹³. These items and the work done within the framework of the ACE are not limited to a mere presentation on one topic, but rather inform the whole of the program of the capacity-building activity. In addition, strategic coordination and cooperation with right holders, and their role and contribution in the field of Building Respect for IP is also highlighted¹⁴.

13. Within this framework, the following topics are regularly addressed, and corresponding ACE documents are referenced as background material:

- Attitudes and perceptions of the consumers towards IP. This topic aims at helping judges and law enforcement officials to better understand the environment in which IP infringements take place and to appreciate the role they may have in contributing to raising awareness on respect for IP, in addition to their judicial and enforcement roles¹⁵.

¹⁰ For relevant ACE working documents, see in particular, S. Musungu, "IPR Infringements and Enforcement - Accounting for Socio-Economic, Technical and Development Variables" (WIPO/ACE/6/10); G. Sibanda, "Piracy and Counterfeiting: Perspectives and Challenges for African Countries" (WIPO/ACE/7/10).

¹¹ See also paragraph 13 below.

¹² See in particular, S. Musungu, "The Contribution of, and Costs to, Right Holders in Enforcement, Taking into Account Recommendation 45 of the WIPO Development Agenda" (WIPO/ACE/5/10).

¹³ See paragraph 13 below.

¹⁴ These are the main topics of the third and fourth ACE sessions.

¹⁵ See J. Karaganis, "Media Piracy in Emerging Economies: Price, Market Structure and Consumer Behavior" (WIPO/ACE/6/5); J. Hardy, "Research Report on Consumer Attitudes and Perceptions on Counterfeiting and Piracy" (WIPO/ACE/6/6); Z. Tóth, "Surveys on Consumers' Awareness and Attitudes in Relation to Counterfeiting in Hungary" (WIPO/ACE/8/4); K. Tsuru, "The Study of Piracy – Understanding the Shadow Market in Mexico" (WIPO/ACE/10/12). In addition, all the ACE documents on education and awareness-raising are relevant: For the last two ACE sessions, see documents WIPO/ACE/9/12 to WIPO/ACE/9/18 and WIPO/ACE/10/10, WIPO/ACE/10/11 and WIPO/ACE/10/12 to WIPO/ACE/10/16 at: http://www.wipo.int/meetings/en/details.jsp?meeting_id=30137, and http://www.wipo.int/meetings/en/details.jsp?meeting_id=36022.

- IP enforcement in the digital environment. This is another recurring topic requested by Member States, the relevance of which derives from technological developments. Legislative and case-law developments on questions relating to the role of Internet service providers, notice-and-take-down procedures, website blocking, or graduated response schemes are discussed, as well as “follow-the-money” initiatives¹⁶.
- The challenges of the enforcement of IP rights and the building of a sustainable environment of respect for IP, cooperation between the various law enforcement agencies and their respective functions, and the role of right holders in aiding the enforcement authorities¹⁷ are also recurring themes, often discussed in roundtables.
- More specifically for members of the judiciary, the following themes are often addressed:
 - Recent case-law developments in trademark and copyright law. Useful tools such as the WIPO Case Books on the Enforcement of IP Rights¹⁸ are used as reference.
 - Mechanisms to complement IP enforcement, such as voluntary mechanisms between right holders and online intermediaries and alternative dispute resolution (ADR)¹⁹.
 - Private international law issues in IP infringements, discussing cross-border considerations in IP infringement cases, pertaining to the jurisdictional competence and the applicable law²⁰.

B. TOPICS ON PART III OF THE TRIPS AGREEMENT AND ITS IMPLEMENTATION

14. Topics under this title cover the general legal framework applicable to the enforcement of IP rights. Typically, there is one topic that addresses the international framework, which focuses on Part III of the TRIPS Agreement, and another topic on the national framework, which relates to the way that Part III of the TRIPS Agreement has been or is being implemented at the national level of the country or countries concerned²¹. These general topics are then followed

¹⁶ See the various contributions presented, *inter alia*, in the framework of the ninth (WIPO/ACE/9/20 to 24; WIPO/ACE/9/27; at: http://www.wipo.int/meetings/en/details.jsp?meeting_id=30137) and tenth (WIPO/ACE/10/18; WIPO/ACE/10/20 to 21; WIPO/ACE/10/24 and 25, at:

http://www.wipo.int/meetings/en/details.jsp?meeting_id=36022) sessions of the ACE.

¹⁷ See, *inter alia*, the documents of the seventh session of the ACE, dedicated to the topic of “Contribution of, and costs to, right holders in enforcement, taking into consideration Recommendation No. 45 of the WIPO Development Agenda” (http://www.wipo.int/meetings/en/details.jsp?meeting_id=17445). See also M. Babar, “Mainstreaming Corporate Social Responsibility towards Developing Respect for IP” (WIPO/ACE/7/4).

¹⁸ http://www.wipo.int/edocs/pubdocs/ar/intproperty/791/wipo_pub_791.pdf (Arabic);

http://www.wipo.int/edocs/pubdocs/en/intproperty/791/wipo_pub_791.pdf (English);

http://www.wipo.int/edocs/pubdocs/fr/wipo_pub_629.pdf (French); and

http://www.wipo.int/edocs/pubdocs/es/intproperty/627/wipo_pub_627.pdf (Spanish).

¹⁹ See, A. Christie, “Voluntary Mechanisms for Resolving IP Disputes” (WIPO/ACE/8/10); T. Cook, “Alternative Dispute Resolution (ADR) as a Tool for Intellectual Property (IP) Enforcement” (WIPO/ACE/9/3) and T. Barton, J. Cooper, “Resolving Intellectual Property Problems through Alternative Dispute Resolution” (WIPO/ACE/9/9). See also the other documents discussed on the issue of ADR in the last two sessions of the ACE (WIPO/ACE/9/4 to 8 at: http://www.wipo.int/meetings/en/details.jsp?meeting_id=30137; WIPO/ACE/10/4 to 9 at: http://www.wipo.int/meetings/en/details.jsp?meeting_id=36022).

²⁰ See the Report on “Private International Law Issues in Online Intellectual Property Infringement Disputes with Cross-Border Elements – An Analysis of National Approaches” (http://www.wipo.int/edocs/pubdocs/en/wipo_rep_rfip_2015_1.pdf).

²¹ Taking due account of the fact that the LDCs that are members of the WTO benefit from the transition period of Article 66 of the TRIPS Agreement (until July 1, 2021, subject to a possible further exemption by the TRIPS Council) to implement the provisions of the TRIPS Agreement, including Part III thereof, in their national law.

by others which, depending on the audience, may go into greater detail with respect to specific issues on enforcement within the framework provided by the various provisions of Part III of the TRIPS Agreement and its implementation in the national law(s):

- The general obligations under Article 41 and the need for fair and equitable procedures under Article 42. It is often within this framework that issues such as balanced and effective judicial systems for IP enforcement and the possible abuse of enforcement procedures are discussed²².
- Border Measures. The minimum obligations and options of Articles 51 to 60 of the TRIPS Agreement are examined, as well as the way that these provisions are implemented in national law(s) and applied. Within the framework of this topic, participants may raise issues such as “simplified procedures”²³ or the storage and disposal of infringing goods. In addition, issues such as risk analysis and risk management by the competent authorities and the challenges they face in the application of border measures may also be discussed.
- Evidentiary Issues. The procedural mechanisms to prove alleged IP infringements are dealt with in more detail. Provisional measures aimed at gathering evidence as to the fact of the infringement, its scope and its origin (Article 50(1)(b) TRIPS), such as “Anton Piller” orders in common-law countries and the comparable procedure of *saisie-contrefaçon* in civil-law countries, are examined. Other mechanisms used to obtain or handle evidence (production of evidence and presumptions, Article 43 TRIPS; the optional right of information, Article 47 TRIPS; “ordinary” evidential mechanisms including expert testimony, witnesses, etc.).
- Civil Injunctions (both temporary, through provisional measures under Article 50(1)(a) TRIPS, and as a corrective remedy under Article 44 TRIPS).
- Damages (Article 45 TRIPS). The conditions for awarding damages and the quantum, on the basis of the law in force and case-law developments, usually trigger a lot of discussion.
- The disposal outside the channels of commerce of IP infringing goods and of materials predominantly used for committing the infringement (whether in the framework of civil or criminal proceedings, in line, respectively, with Articles 46, 59 and 61 TRIPS). Attention is given to the issue of the environmental-friendly disposal of such goods and its challenges for developing countries²⁴.

²² On the issue of abuse of procedures, see S. Musungu, “The Contribution of, and Costs to, Right Holders in Enforcement, Taking into Account Recommendation 45 of the WIPO Development Agenda” (WIPO/ACE/5/10). “Sham Litigation” as such was also addressed through the “Draft Study on the Anti-competitive Enforcement of IP Rights: Sham Litigation” by Instituto de Pesquisa Econômica Aplicada (IPEA) (WIPO/ACE/7/REF/IPEA).

²³ “Simplified procedures”, which are not contemplated in the TRIPS Agreement, are procedures foreseen in some national or regional (e.g., European Union) legislation to ensure the swift disposal of IP infringing goods, under specific conditions including the agreement of the importer/owner/consignee of the goods (which may be deemed to exist in some cases), without having to start a judicial procedure.

²⁴ Besides the work done on this subject within the ACE (see D. Blakemore, “A Study Relating to Existing Methods of Disposal and Destruction of Counterfeit Goods and Pirated Goods within the Asia-Pacific Region” (WIPO/ACE/6/8)), workshops specifically dedicated to this issue were held by the WIPO Secretariat and the United Nations Environment Program (UNEP) in 2012

(http://www.wipo.int/export/sites/www/enforcement/en/activities/pdf/program_bangkok.pdf) and 2013

(http://www.wipo.int/meetings/en/details.jsp?meeting_id=31303).

- Criminal procedures and sanctions. The minimum options and applicable concepts (such as the notion of “commercial scale”) arising under Article 61 of the TRIPS Agreement are examined, as well as the way that national laws implement this provision. In addition, other fundamental questions such as the motivation for criminalizing some IP infringements, the conditions for initiating criminal proceedings, and proportionality in the sentencing are also discussed²⁵.

C. RESOURCE TOOLS

15. In addition to the above-mentioned WIPO Case Books, capacity-building activities that target more specifically law enforcement authorities and prosecutors make use, as a resource tool, of WIPO’s training materials “Investigating and Prosecuting IP Crime”. They provide general guidance on the legal elements of counterfeiting and piracy and relevant investigative and evidentiary issues. Program 17 is working with a number of national authorities to customize these materials for local requirements. They are being translated into Arabic, French and Spanish.

D. SPECIFIC CAPACITY-BUILDING ACTIVITIES ON AWARENESS-RAISING

16. If requested by national or regional authorities to do so, Program 17 also organizes capacity-building activities for IP offices on the subject of awareness raising and communications. One such workshop was held in 2015 in Cairo, Egypt, in cooperation with the League of Arab States and included the presentation of awareness raising tools, exchanges of national experience, and information on consumer attitudes to IP.

E. FORMAT AND EVALUATION OF THE CAPACITY-BUILDING ACTIVITIES

17. Capacity-building activities are designed to be as interactive as possible. Group discussions, roundtables and training scenarios that require active participation by audience members are held regularly.

18. The speakers who present in the capacity-building activities are composed of WIPO staff members, local speakers, and international speakers whose participation is generally financed by the WIPO Secretariat. Speakers are chosen on the basis of their relevant expertise in line with the program or specific topics addressed in the program. When possible, speakers from partner IGOs are invited to take part in the programs (e.g., a speaker from the World Customs Organization to speak on topics relating to border measures). In addition to these speakers, representatives from right holder associations may be invited, at their own costs, to make a presentation and/or participate in one or more roundtables as to their role and cooperation with the public authorities.

19. This collaboration with IGOs and the right holders is in line with the mandate of the ACE which calls for “coordination with certain organizations and the private sector to combat counterfeiting and piracy activities”.

²⁵ See the substantive working documents of the second session of the ACE. See also : L. Harms, “The Enforcement of Intellectual Property Rights by Means of Criminal Sanctions. An Assessment” (WIPO/ACE/4/3), S. Musungu, “The Contribution of, and Costs to, Right Holders in Enforcement, Taking into Account Recommendation 45 of the WIPO Development Agenda” (WIPO/ACE/5/10).

20. All capacity-building activities are subject to an evaluation process. The evaluation is made through a questionnaire form in which the participants of the workshop are invited to indicate the usefulness of the workshop for the daily exercise of their profession, and their level of satisfaction with the workshop, and to provide further comments, if any. For the biennium 2014-2015, the average figures for the capacity-building activities were the following:

- Usefulness: 92.40%
- Satisfaction: 91.50%.

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