

Advisory Committee on Enforcement

Thirteenth Session

Geneva, September 3 to 5, 2018

SUMMARY BY THE CHAIR

adopted by the Committee

1. The thirteenth session of the Advisory Committee on Enforcement (ACE) was held from September 3 to 5, 2018. The session was attended by 77 Member States, 1 Non-State Member and 25 Observers.
2. Under agenda item 1, Mr. Minelik Alemu Getahun, Assistant Director General of WIPO, opened the session by welcoming all delegations to the thirteenth session of the Committee and thanking the Member States for their close engagement in the work of the Committee and in the activities of WIPO in building respect for intellectual property (IP) in general. He noted that over the previous year, numerous delegations had emphasized the importance they attached to balanced and effective enforcement, to awareness raising, to building respect for IP and to the work of the Committee in particular. He expressed the Secretariat's gratitude to the experts and panelists, who came from all regions of the world and contributed to the work of the thirteenth session.
3. Under agenda item 2, Mr. Héctor Manuel Balmaceda Godoy, Director General for Enforcement, National Directorate of Intellectual Property (DINAPI), Paraguay, was elected as Chair. Ms. Anna Vuopala, Government Counsellor, Division for Copyright Policy and Audiovisual Culture, Department of Culture and Art Policy, Ministry of Education and Culture, Finland, and Mr. Erry Prasetyo, Second Secretary (Intellectual Property), Permanent Mission of Indonesia to the United Nations and other international organizations in Geneva, were elected as Vice-Chairs.
4. Under agenda item 3, the Committee adopted the Agenda (document WIPO/ACE/13/1).

5. Under agenda item 4, the Committee approved the participation as *ad hoc* observers in its thirteenth session of the Belgian Anti-counterfeiting Association (ABAC-BAAN) and the Spanish Association for the Defense of Trademarks (ANDEMA).

6. The Committee heard opening statements by the Asia and Pacific Group, the Group of Latin American and Caribbean Countries (GRULAC), the Group of Central European and Baltic States (CEBS), Group B, the African Group and the European Union (EU).

7. The Delegation of Indonesia, speaking on behalf of the Asia and Pacific Group, urged Delegations not to lose sight of the mandate of the ACE, namely technical assistance and coordination in the areas of IP enforcement and building respect for IP, without engaging in any norm-setting activities. The Group recalled that the ACE should focus on the objectives of combating counterfeiting and piracy activities; public education; assistance; coordination to undertake national and regional training programs for all relevant stakeholders and exchange of information on enforcement issues. It was therefore desirable for the ACE to stay true to its mandate and program, guided by the General Assembly as well as relevant Strategic Goals and Recommendations of the WIPO Development Agenda (DA). The ACE was important so that Member States could share national experiences, bearing in mind that, as IP rights (IPRs) were private rights and territorial in nature, the primary responsibility of enforcing them should be on the right holders and not governments. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) required members of the World Trade Organization (WTO) to make enforcement procedures available to right holders to take effective action against acts of IP infringement, but it did not create obligations to put in place a judicial system for the enforcement of IPRs that was distinct from the general law enforcement system. The Group shared its expectation that the technical assistance provided by WIPO on IP enforcement should continuously aim to be in accordance with DA Recommendation 45, which called upon WIPO to address IP enforcement in the context of broader societal interests and especially development-oriented concerns. It was important that WIPO continued to approach the issue of enforcement of IPRs in a holistic manner and in the context of building respect for IP, to ensure that the means to enforce IPRs were in line with the objectives of Article 7 of the TRIPS Agreement. Recalling that the Committee agreed to consider four work program items, the Group believed that it was important to continue discussing item C. Adequate training was necessary to ensure that relevant government institutions involved in IP enforcement could adequately determine, on a case-by-case basis, the balance between the interests of the right holders and the wider public interest. The Group always welcomed presentations of WIPO's technical assistance in the area of IP enforcement, which should become part of the future work of the ACE, so as to enable Member States to be in a more knowledgeable position when requesting technical assistance.

8. The Delegation of El Salvador, speaking on behalf of GRULAC, reiterated the Group's commitment to constructively contributing to the progress of the work of the Committee, which was demonstrated by the active participation of Group members in the exchange of experiences under the work program agreed upon at the preceding ACE session. The Group was of the view that building respect for IP in a sustainable way, which was the mandate of the ACE, demanded the adoption of measures that not only helped to protect and enforce IPRs but also contributed to preventing their abuse by right holders. This type of abuse could curtail competition and innovation – the ultimate objective of the IP system. GRULAC therefore expressed its support for the contributions of Brazil and Peru on administrative approaches to addressing the interplay of IP enforcement and competition law. The Group believed that the exchange of information on the intersection of IP enforcement and competition law could increase mutual understanding of the topic and help WIPO Member States to enforce IP rights and obligations in a balanced way. At the same time, the Group highlighted the importance of both interinstitutional coordination at the national and regional level and the strengthening of legislative and institutional IP enforcement frameworks. For this reason the Group expressed its support for the contributions by Mexico

(“Combating Software Piracy in Mexico”), Peru (“Enforcement Systems in IBEPi Countries”) and Colombia (“Assessment of Damages to Intellectual Property – A View from the Colombian Legal System”) under work program item B. The Group expressed its confidence in the success of the work of the Committee under the work program of the thirteenth ACE session.

9. The Delegation of Lithuania, speaking on behalf of CEBS, thanked those WIPO Member States which actively contributed to the Committee’s work with their national presentations and participation in the exhibition and looked forward to the presentations and discussions. The number of speakers from different regional groups, which included CEBS member Croatia, demonstrated the importance that was attached to the work of the Committee. The Group was convinced that an exchange of experiences would assist Member States in developing IP enforcement policies in their countries. Effective and balanced enforcement mechanisms were key in ensuring that IPRs played their essential role of contributing to economic development through the promotion and protection of innovations. While the Group supported the work program of the thirteenth session, it was important to exchange information on awareness-building activities and strategic campaigns, especially tailored to the youth, as well as on institutional arrangements concerning IP enforcement policies and regimes, including mechanisms to resolve IP disputes. The Group noted that new realities were faced in the digital era that not only created interesting opportunities for creators and innovators, but also brought about new challenges and risks to IPRs. The Group took great interest in the experiences with IP enforcement, in particular in the challenging digital environment.

10. The Delegation of Switzerland, speaking on behalf of Group B, noted its confidence that the thirteenth ACE session would contribute to the appropriate enhancement towards IPR enforcement, which was one of the essential elements in the implementation of an effective and meaningful IP protection system. The Group reiterated the importance it continuously attached to the Committee and its subject matter, namely IPR enforcement, and noted that without effective and balanced enforcement mechanisms, IPRs would not be able to fulfill their central objective of contributing to development through the promotion and protection of innovations. The Group believed that enforcement was a subject that all WIPO members should take seriously, remain sincerely engaged in and consider as a common interest irrespective of their levels of development. The Group also recognized that the difficulties of effective enforcement existed in its application rather than in laws and regulations *per se*. It was therefore very important to learn lessons from the experiences of others, and the ACE was the place where delegations could do so. The Group expressed its satisfaction with the balanced nature of the four work program items, noting that the long list of presentations indicated the interest expressed by Member States and signaled the positive spirit in which the Committee operated.

11. The Delegation of Morocco, speaking on behalf of the African Group, reaffirmed that, while it recognized the importance and essential role of the mandate of the Committee in the area of respect for IP, it attached importance to all work program items. The Group also welcomed the thematic approach of the work of the Committee – discussing specific aspects of IP enforcement on the basis of concrete experiences of WIPO Member States without engaging in any norm-setting activities. This allowed Delegations to learn from the experience of other countries and to mutually benefit from their practices. The Group was convinced that this approach provided sufficient flexibility to make considerable progress in various areas. The Group took particular note of document WIPO/ACE/13/2 Rev. on the recent activities of WIPO in the field of building respect for IP, which listed the activities undertaken by WIPO Program 17 to build respect for IP and thanked WIPO for its contribution to the organization, including in Africa, of national, regional and interregional meetings. Equally welcoming the work accomplished in the areas of capacity building and awareness raising, the Group expressed its wish that more Workshops, Seminars, Conferences and Colloquia be organized in Africa. The Group was of the view that all of WIPO’s activities related to IP enforcement had to conform with the DA and thus expected the future work

of the Committee to be balanced and undertaken in line with DA Recommendation 45 so that IP enforcement could be approached “in the context of broader societal interests and especially development-oriented concerns, with a view that the protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology”. The Group also welcomed a discussion on how to intensify and improve WIPO’s technical assistance in the area of IP enforcement.

12. The Delegation of Austria, speaking on behalf of the EU and its member states, welcomed the well-balanced work program of the ACE and emphasized that the EU was a strong supporter of the work and the mission of the Committee. The Delegation therefore reiterated the EU’s commitment to contributing to the work of the ACE and welcomed the contributions from the European Commission, the State Intellectual Property Office of the Republic of Croatia, the Ministry of Education and Culture of Finland, the United Kingdom Intellectual Property Office (UKIPO) and the judiciary of the United Kingdom to the thirteenth session of the ACE. The EU was also pleased that the Committee would hear about the Authenticity Project funded by the European Observatory on Infringements of Intellectual Property Rights at the European Union Intellectual Property Office (EUIPO Observatory). The EU recognized the value of best practice exchange and continued to believe that the state-centric agenda point complemented the existing issue-centric agenda points in a balanced manner. The EU therefore supported the Committee in continuing to place this item on future agendas. In light of the new opportunities for innovators and creators to reach new markets and audiences, but also considering the increased risks for the IP system through wider and quicker proliferation of IP-infringing goods and content, brought about by the digital revolution, the EU welcomed more detailed discussions on arrangements to address online IP infringements. In particular, the EU looked forward to discussions on working with intermediaries to tackle IPR infringement and expressed its appreciation to the WIPO Secretariat for the possibility to contribute to this discussion and share the experiences of the EU and its member states in this area. The Delegation noted that the European Commission would present the industry-led initiatives introduced as part of the EU’s “follow the money” approach to IPR enforcement and that the UK would present its experiences in working with intermediaries. The EU equally welcomed the exchange of information on national experiences on awareness-building activities and strategic campaigns as a means for building respect for IP among the general public, especially the youth, highlighting the strong involvement of the EUIPO Observatory and EU member states in this area. In this context, the EU reiterated its appreciation for the close cooperation between WIPO and the EUIPO Observatory and underlined the importance of specific activities and projects dedicated especially to small and medium-sized enterprises. Welcoming the topics on IP and the judiciary and the quantification of damages in cases of IP infringements, the EU considered the specialization of the judiciary an important element of the overall IPR enforcement strategy and agreed that judicial discretion and flexibility were crucial tools in reaching and enforcing fair and equitable decisions. The Delegation thanked the WIPO Secretariat for preparing the documents on the recent activities of WIPO in the area of building respect for IP (WIPO/ACE/13/2 Rev.). The EU and its member states supported the continuation of information exchange on national and regional experiences in respect of WIPO’s legislative assistance. In this context, the EU re-emphasized that WIPO should continue to be flexible and take into account the level of development, the difference in legal tradition and the possible abuse of enforcement procedures, bearing in mind the broader societal interest and WIPO Member States’ priorities. The EU and its member states were confident in the continuation of fruitful collaborations between delegations in order to more effectively combat IPR infringements and ensure a fair balance between the incentives to innovate and access to innovation.

13. Under agenda item 5, the Committee heard 30 expert presentations and four panel discussions relating to the various items of the work program (documents WIPO/ACE/13/4 to WIPO/ACE/13/10). In addition, the Secretariat showed a video on a recent WIPO activity on the use of teaching materials on respect for copyright in Malawi.

14. Under work program item A (“exchange of information on national experiences on awareness building activities and strategic campaigns as a means for building respect for IP among general public, especially the youth, in accordance with Member States’ educational or any other priorities”), six Member States shared their experiences. The presentations comprised “Awareness-raising Activities Targeting Schoolchildren Undertaken in Croatia” by the State Intellectual Property Office of the Republic of Croatia (SIPO); “Public Outreach Work in the Area of Intellectual Property Rights: Kazakhstan’s Experience – The National Anti-Piracy Campaign” by the Department for Intellectual Property Rights, Ministry of Justice of Kazakhstan; “Raising IP Awareness via Social Media in Thailand” by the Department of Intellectual Property (DIP), Ministry of Commerce of Thailand; “IP Public Awareness Campaigns in the United States of America” by the United States Patent and Trademark Office (USPTO); “The Authenticity Project” by ANDEMA; “*Respect ©copyright!* – Building Copyright Awareness Among Pupils” by the Cooperative Society of Music Authors and Publishers in Switzerland (SUISA). Reference was made to document WIPO/ACE/13/4.

15. A panel discussion took place, moderated by Ms. Elizabeth Jones, IP Enforcement Policy Advisor, Copyright and IP Enforcement Directorate, UKIPO, with interventions from the Delegations of Belize, Côte d’Ivoire, Kenya, the Russian Federation and Uganda, and the Representatives of the International Trademarks Association (INTA) and the European Brands Association (AIM).

16. Under work program item B (“exchange of information on national experiences relating to institutional arrangements concerning IP enforcement policies and regimes, including mechanism to resolve IP disputes in a balanced, holistic and effective manner”), presentations were grouped into four topics.

17. Under the topic “The Interface of IP Enforcement and Competition Law”, two Member States shared their experiences. The presentations comprised “The Intersection Between Intellectual Property Rights and Antitrust Law in Brazil” by the Administrative Council for Economic Defense (CADE), and “Intellectual Property and Unfair Competition Law in Peru” by the National Institute for the Defense of Competition and Protection of Intellectual Property (INDECOPI) (document WIPO/ACE/13/5).

18. A panel discussion took place, moderated by Mr. Giovanni Napolitano, Deputy Director, Department for Transition and Developed Countries, WIPO, Geneva, with interventions from the Delegations of Brazil, Iran (Islamic Republic of), Turkey, Israel, Switzerland, Indonesia, Chile and Pakistan.

19. Under the topic “IP Enforcement Coordination”, a total of eight Member States presented their experiences. Individual presentations were made on “Intellectual Property Dispute Resolution in Belarus: Government Bodies Involved and Their Competences” by the National Center of Intellectual Property (NCIP) of Belarus; “Strengthening the Protection of Industrial Designs to Promote the Development of the Lighting Industry – Intellectual Property Rights Protection in Guzhen, Zhongshan” by the Zhongshan Municipal Bureau of Intellectual Property; “China’s Experience in Promoting the Use of Legitimate Software” by the National Copyright Administration of China; “Best Practices for the Use of Cease-and-desist Letters Addressed to Individuals in Finland” by the Department of Culture and Art Policy, Ministry of Education and Culture of Finland; “Combating Software Piracy in Mexico” by the Mexican Institute of Industrial Property (IMPI); “Enforcement Systems in IBEPi Countries” by INDECOPI; “Administrative Measures Taken by the Korean Intellectual Property Office Under the Unfair Competition Prevention and Trade Secret Protection Act” by the Korean Intellectual Property Office (KIPO); “Criminal Investigation and Prosecution of IP Infringement in the Republic of Korea” by the Ministry of Justice of the Republic of Korea; “The Development of Mechanisms to Ensure Compliance with Copyright and Related

Rights in the Russian Federation” by the Ministry of Culture of the Russian Federation; and “Intellectual Property Enforcement Coordination in Uganda” by the Uganda Registration Services Bureau (URSB). Reference was made to document WIPO/ACE/13/6.

20. Discussions followed with interventions from the Delegations of Canada, South Africa, Ghana, the United States of America and the United Kingdom, and the Representative of the World Customs Organization (WCO).

21. Under the topic “Arrangements to Address Online IP Infringements”, two Member States and one Non-State Member presented their experiences. The individual presentations included “Proposed Online Copyright Enforcement Measures in Israel” delivered by the Intellectual Property Law Division, Ministry of Justice of Israel; “Experiences of the United Kingdom in Working with Intermediaries to Tackle Intellectual Property Rights Infringement” by UKIPO and “Stepping up Industry-led Efforts to Reduce Intellectual Property Infringements – An Update from the European Commission” delivered by the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs of the European Commission. Reference was made to document WIPO/ACE/13/7.

22. A panel discussion took place, moderated by Ms. Barbara Suhr-Jessen, Head, Enforcement and Anti-counterfeiting, Danish Patent and Trademark Office (DKPTO), with interventions from the Delegations of Indonesia, Mexico, Belarus, Finland, Morocco, the United State of America and South Africa and the Representative of the European Brands Association (AIM).

23. Under the topic “Balanced, Holistic and Effective IP Dispute Resolution”, one presentation was made on “Intellectual Property and the Judiciary” by the Center for International Intellectual Property Studies (CEIPI), University of Strasbourg, France. Reference was made to document WIPO/ACE/13/8.

24. In addition, four Member States and one non-governmental organization presented on the topic “The Quantification of Damages in Cases of IP Infringements”. Individual presentations were made on “Assessment of Damages to Intellectual Property – A View from the Colombian Legal System” by the Superintendency of Industry and Commerce of Colombia; “Calculation of Damages in the Case of Infringement of Intellectual Property” delivered by the Honorable Justice Dr. Al-Husban, Jordan; “Compensation for Damages in Counterfeiting Cases” delivered by the Honorable Justice Mr. El Amrani, Morocco; “Experiences on Quantification of Damages for Intellectual Property Rights Infringement in the United Kingdom” by the Honorable Justice Mr. Johns QC, United Kingdom; and “The Study on the Quantification of Monetary Relief of the International Association for the Protection of Intellectual Property (AIPPI)”, delivered by AIPPI. Reference was made to document WIPO/ACE/13/9.

25. A panel discussion took place, moderated by Mr. Xavier Seuba, Associate Professor, Judicial Trainings Manager and Director of Diploma on Patent Litigation in Europe, CEIPI, University of Strasbourg, France, with interventions from the Delegations of Brazil, Kazakhstan, Mexico, the Republic of Korea, Jordan, the United States of America, Kenya, Belize, the EU and the Representative of the WCO.

26. Under work program item C (“exchange of information on national experiences in respect of WIPO’s legislative assistance, with a focus on drafting national laws of enforcement that take into account the flexibilities, the level of development, the difference in legal tradition and the possible abuse of enforcement procedures, bearing in mind the broader societal interest and in accordance with Member States’ priorities”), the Committee heard an intervention from the Delegation of Indonesia.

27. Under work program item D (“exchange of success stories on capacity building and support from WIPO for training activities at national and regional levels for Agencies and national officials in line with relevant Development Agenda Recommendations and the ACE mandate”), two national and one regional experiences were shared in relation to “National and Regional Experiences with the Adaptation of WIPO’s Training Materials Investigating and Prosecuting IP Crime”. Individual presentations were made on “The Value of a Holistic Approach to Training Law Enforcement Agencies Using Customized Training Materials” by the Companies and Intellectual Property Commission (CIPC), South Africa; and “The Customization of the WIPO Training Materials Investigating and Prosecuting Intellectual Property Crime for the Use by Judges, Public Prosecutors and IP Law Enforcement Officials in Jordan” by the Honorable Justice Dr. Nehad Al-Husban, Jordan. The African Regional Intellectual Property Organization (ARIPO) delivered a presentation on “The Use of the Adapted WIPO’s Training Materials Investigating and Prosecuting IP Crime in ARIPO Member States”. Reference was made to document WIPO/ACE/13/10.

28. Discussions followed with interventions from the Delegations of Jamaica and Ghana.

29. Under agenda item 6, the Secretariat introduced document WIPO/ACE/13/2 Rev. on recent activities of WIPO in the field of building respect for IP, guided by the Program and Budget, DA Recommendation 45, and WIPO Strategic Goal VI “International Cooperation on Building Respect for IP”. The document set out technical assistance in the field of building respect for IP, where requested services included legislative assistance, as well as training and awareness raising for law enforcement officials and the judiciary. The document also included activities aimed at further enhancing systematic and effective international cooperation with other international organizations, non-governmental organizations and the private sector, in order to ensure a balanced and transparent approach. Program 17 also contributed to a number of WIPO publications on the latest developments in the area of building respect for IP. The Secretariat noted that the description of each activity in the document was accompanied by information about the venue, any partnering organizations, participating countries, a brief summary of the objectives of the activity, and a web link to the full program. The Committee took note of the information contained in the document. An intervention was made by the Delegation of China.

30. Under agenda item 7, the Committee agreed to continue to consider, at its fourteenth session, the following topics:

- Exchange of information on national experiences on awareness building activities and strategic campaigns as a means for building respect for IP among general public, especially the youth, in accordance with Member States’ educational or any other priorities;
- Exchange of information on national experiences relating to institutional arrangements concerning IP enforcement policies and regimes, including mechanism to resolve IP disputes in a balanced, holistic and effective manner;
- Exchange of information on national experiences in respect of WIPO’s legislative assistance, with a focus on drafting national laws of enforcement that take into account the flexibilities, the level of development, the difference in legal tradition and the possible abuse of enforcement procedures, bearing in mind the broader societal interest and in accordance with Member States’ priorities; and

- Exchange of success stories on capacity building and support from WIPO for training activities at national and regional levels for Agencies and national officials in line with relevant Development Agenda Recommendations and the ACE mandate.

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