

## **Advisory Committee on Enforcement (ACE)**

**Fourteenth Session**  
**Geneva, September 2 to 4, 2019**

### LIST OF PREPARATORY DOCUMENTS

*prepared by the Secretariat*

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WIPO/ACE/14/3

ADMISSION OF NON-GOVERNMENTAL ORGANIZATIONS  
AS AD HOC OBSERVERS  
*prepared by the Secretariat*

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WIPO/ACE/14/4

AWARENESS-BUILDING ACTIVITIES AND STRATEGIC  
CAMPAIGNS AS A MEANS FOR BUILDING RESPECT FOR  
INTELLECTUAL PROPERTY  
*Contributions prepared by India, Norway, Oman, Peru and  
the Republic of Moldova*

KEEPING PIRATES AT BAY – INDIA’S ANTI-PIRACY CAMPAIGN

*Contribution prepared by Mr. Rajiv Aggarwal, Joint Secretary, Intellectual Property Division,  
Department for Promotion of Industry and Internal Trade (DPIIT), Ministry of Commerce and  
Industry, New Delhi, India*

Abstract: In taking up the major challenge of piracy faced by India’s vibrant media and entertainment industry, the Cell for IPR Promotion and Management (CIPAM) under the Department for Promotion of Industry and Internal Trade (DPIIT) has conducted intellectual property (IP) enforcement training programs for the police and customs officials and has contributed to several legislative and administrative measures. A key activity has been raising awareness, particularly in young people, of the perils of piracy. Short videos by famous Bollywood stars and animated videos featuring comic characters have been produced and are being broadcast in cinemas and on television. India’s IP mascot, IP Nani, features in videos and presentations for schools, while college students participate in IP competitions.

NORWEGIAN AWARENESS-RAISING INITIATIVES ON COUNTERFEITING – AVOID  
BUYING COUNTERFEIT GOODS ONLINE AND ON HOLIDAY

*Contribution prepared by Ms. Hedvig Bengston, Senior Legal Adviser, Norwegian Intellectual  
Property Office (NIPO), Oslo, Norway*

Abstract: Since 2014, the Norwegian Industrial Property Office (NIPO) has carried out several initiatives to raise awareness of the consequences and risks of buying counterfeit products. The target groups have been Norwegians buying counterfeit goods online and Norwegians buying counterfeit goods on holiday abroad. All of the initiatives have been undertaken on a relatively low budget. However, NIPO has reached out to many people through a proactive approach to raise media attention. Many of the initiatives have been implemented together with other stakeholders, such as representatives from the private sector, customs and the Norwegian Consumer Authority.

THE 2018/19 SCHOOL COMPETITION ON RESPECT FOR COPYRIGHT IN OMAN

*Contribution prepared by Dr. Maya Al ‘Azri, Educational Expert and Director of Innovation and  
Scientific Olympiad, Ministry of Education, Muscat, Oman*

Abstract: The Ministry of Education of Oman has paid special attention to IP awareness raising and education in schools in the last three years, owing to the growing need for children to use a variety of information resources in the search for ideas through their own research, thus capitalizing on innovation at the school level. As it is easy for them to use available technologies to copy or download information and use it as their own work without

acknowledging the original work, a competition was held in the academic year 2018/19 in order to raise their awareness of copyright, enhance their understanding of the illegality of infringement and point the way to lawful access to the material that they need. The schoolchildren learnt about their right to benefit from copies of their works and to recognize how valuable this can be to their own and society's future.

*I DECIDE, I RESPECT – I RESPECT INTELLECTUAL PROPERTY AND REJECT CONTRABAND – A RECENT EDUCATIONAL PROGRAM FOR CHILDREN IN SECONDARY SCHOOLS IN PERU*

*Contribution prepared by Mr. Ray Augusto Meloni García, Director, Directorate of Distinctive Signs, National Institute for the Defense of Competition and the Protection of Intellectual Property (INDECOP), Lima, Peru*

Abstract: This contribution describes the activities carried out as part of the pilot educational project *I Decide, I Respect – I Respect Intellectual Property and Reject Contraband*. The objective of the project was to include issues related to piracy, counterfeiting and contraband in the development of the 2018 curriculum for secondary schools. The project was implemented by the Commission for the Fight against Customs Crimes and Piracy, with the intervention of the Ministry of Education, and was divided into two stages. The first stage consisted of training teachers using face-to-face workshops, virtual forums and supporting material. The second stage consisted in the effective completion of courses for secondary school students. By 2018, 9,801 students from Lima and Callao had benefited from this initiative. During 2019 it is planned to extend this initiative to other administrative departments in Peru.

*THE PROGRAM FOR CULTURAL CHANGE IN THE REPUBLIC OF MOLDOVA*

*Contribution prepared by Dr. Lilia Bolocan, Director General, State Agency for Intellectual Property (AGEPI), Chisinau, Republic of Moldova*

Abstract: In today's world, IP plays an increasingly important role in our societies, contributing to economic growth, cultural development and wellbeing. The *Program for Cultural Change* is a widely-targeted outreach program involving information, education and awareness-raising activities, designed to promote and protect intellectual property rights (IPRs) and thus achieve cultural change in the IP environment of the Republic of Moldova. It was developed and implemented from January 2017 to December 2018. This contribution gives an overview of the program, its goals and objectives, implementation tools and methodology, main outputs and results achieved.

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WIPO/ACE/14/5

COORDINATING INTELLECTUAL PROPERTY  
ENFORCEMENT AT THE NATIONAL AND REGIONAL LEVEL  
*Contributions prepared by Brazil, Greece, Morocco, Portugal,  
Republic of Korea, Spain and United States of America*

*THE ACTIONS OF THE NATIONAL COUNCIL ON COMBATING PIRACY AND  
INTELLECTUAL PROPERTY CRIMES IN BRAZIL*

*Contribution prepared by Mr. Luciano Timm, National Secretary for Consumer Affairs and President, National Council on Combating Piracy and Intellectual Property Crimes (CNCP), and Ms. Isabela Maiolino, Advisor, National Secretariat for Consumer Affairs, Brasilia, Brazil*

Abstract: The National Council on Combating Piracy and Intellectual Property Crimes (CNCP), the Brazilian entity responsible for coordinating the fight against piracy and IP crimes, was

created in 2004. This contribution presents an overview of past and present CNCP activities, the CNCP's composition and its ongoing projects until 2022.

#### THE COORDINATION OF INTELLECTUAL PROPERTY ENFORCEMENT IN GREECE – THE COLLABORATION BETWEEN THE COORDINATING AUTHORITY FOR MARKET SUPERVISION AND THE FIGHT AGAINST ILLICIT TRADE AND THE GREEK ENFORCEMENT AUTHORITIES

*Contribution prepared by Mr. Vasileios Mastrogiannis, Executive Director, Coordinating Authority for Market Supervision and the Fight Against Illicit Trade (SYKEAAP), Ministry of the Economy and Development, and Mr. Spyridon Peristeris, Representative of the General Secretariat of Trade and Consumer Protection of the Ministry of the Economy and Development, SYKEAAP, Athens, Greece*

**Abstract:** The Coordinating Authority for Market Supervision and the Fight Against Illicit Trade (SYKEAAP), initially named Coordinating Authority Against Illicit Trade (SYKAP), was created in 2012. SYKEAAP consists of representatives from both the public and the private sector and operates under the supervision of the Greek Ministry of the Economy and Development. The main mission of SYKEAAP is to develop a common strategy to combat the phenomenon of illicit trade, and the battle against infringements of IPRs is one of its main actions. SYKEAAP coordinates and cooperates with all competent national authorities to efficiently implement joint action. The most important tool in SYKEAAP's operating model is intelligence. As soon as relevant information concerning IPR infringements is brought to SYKEAAP's attention, the representatives of all competent enforcement authorities draw up an action plan, which will be simultaneously implemented by the appropriate authorities without delay or bureaucratic barriers. The results of these actions are notable.

#### A NEW LABELLING SYSTEM FOR AUTO SPARE PARTS DISTRIBUTION CHANNELS IN MOROCCO: THE SALAMATOUNA CERTIFICATION MARK COMBATS COUNTERFEITING

*Contribution prepared by Mr. Larbi Benrazzouk, Director General, Moroccan Office of Industrial and Commercial Property (OMPIC), Casablanca, Morocco*

**Abstract:** The SALAMATOUNA label is a means of organizing the distribution network for auto spare parts and of combatting the use of counterfeit spare parts. Founded in 2017 by the Minister for Industry, Investment, Trade and the Digital Economy of Morocco, SALAMATOUNA is the result of a successful public-private partnership initiated by the National Board for Industrial Property and Anti-Counterfeiting (CONPIAC). This labelling system helps support auto spare parts sellers and ensure consumer safety. SALAMATOUNA is a collective certification mark that aims to certify, upon request, businesses active in the spare parts distribution network (manufacturers, importers, vendors, wholesalers and retailers) that meet a set of requirements determining technical specifications including compliance of marketed spare parts with quality standards and traceability of spare parts distribution services. The right to use the label is granted by a labelling committee, chaired by the Ministry of Industry, Investment, Trade and the Digital Economy, after an initial audit to determine whether the above technical specifications are met. The labelling process is managed through the digital platform developed and administered by the Moroccan Office of Industrial and Commercial Property (OMPIC). This platform references certified businesses across Morocco and provides the geolocation of certified spare parts sales points.

## THE PORTUGUESE APPROACH TO HANDLING COPYRIGHT INFRINGEMENT ON THE BASIS OF PREVENTION, PEDAGOGY AND ENFORCEMENT

*Contribution prepared by Dr. Luis Silveira Botelho, Inspector General, General Inspectorate of Cultural Activities (IGAC), Lisbon, Portugal*

**Abstract:** The General Inspectorate of Cultural Activities (IGAC) has competences spanning different areas. In particular, IGAC has responsibilities for overseeing the integrity of copyright in physical and digital environments, protecting performance venues, issuing film age classifications and providing guidance on the licensing of artistic performances. With over 70 employees dedicated to a number of activities, including the protection of authors' rights and related rights throughout the Portuguese territory, IGAC's work includes reaching out to the current generation of digital natives and active social media users who consume media as a lifestyle and not merely as entertainment, thus blurring the boundaries between their online and offline lives. Through a governance model that uses a collective intelligence-based approach embedded in its daily practices, IGAC has developed programs on the basis of pedagogy, prevention and enforcement. This document will focus on the pedagogical program *IGAC Goes to School* and the Memorandum on Combating Piracy and the Infringement of Copyright and Related Rights Online, with brief references to two other initiatives – *IGACAlerta* and the web portal *Ofertas Legais*.

## RECENT LEGISLATIVE AMENDMENTS TO STRENGTHEN THE PROTECTION OF INDUSTRIAL PROPERTY IN THE REPUBLIC OF KOREA

*Contribution prepared by Mr. Bonghyun Cho, Assistant Director, Multilateral Affairs Division, Korean Intellectual Property Office (KIPO), Daejeon, Republic of Korea*

**Abstract:** The Republic of Korea has consistently ranked among the top five countries in the world in terms of the number of filed patent applications. Nevertheless, the view has been expressed that the level of IP protection should be further increased. The amount of compensation for infringement was considered relatively low and punishment was ineffectual in deterring infringement. Moreover, the recognition of trade secrets in lawsuits was difficult to establish due to their narrow legal definition. To address these issues, various amendments were recently made to relevant laws. Firstly, a system of punitive damages was introduced for intentional infringements of patents and trade secrets. The limited protection of trade secrets was mitigated by extending the scope of activities subject to criminal charges and increasing the severity of sentencing for violations. Furthermore, the authority of the Special Judicial Police of the Korean Intellectual Property Office (KIPO) was extended to allow KIPO officials to directly investigate suspected infringement activities not only in relation to trademarks but also to patents, designs, trade secrets.

## THE COMPREHENSIVE NATIONAL ACTION PLAN TO COMBAT THE SALE OF COUNTERFEIT GOODS AND ENFORCE INDUSTRIAL PROPERTY RIGHTS IN SPAIN

*Contribution prepared by Ms. Marta Millán González, Head, Section for International Cooperation and Court Liaison, Department for Judicial Coordination and International Relations, Ms. Águeda Fole Sanz, Head, WIPO and EUIPO Service, Ms. Regina Valenzuela Alcalá-Santaella, Senior Technician, Department for Legal Coordination and International Relations and Ms. Sara Boy Carmona, Senior Technician, Department for Legal Coordination and International Relations, Spanish Patent and Trademark Office (OEPM), Madrid, Spain*

**Abstract:** Counterfeit goods are harmful to national economies and businesses in highly important sectors such as clothing and footwear; medicines; cosmetic products; wine and

spirits; smartphones; bags and luggage; tyres; toys and games; jewellery and watches; pesticides; batteries; sporting goods; and the music industry. They also have a social impact and are detrimental to the health and safety of consumers. A comprehensive national action plan is therefore necessary and should involve all stakeholders from the public and private sectors who are able to contribute to ending the problem of trademark counterfeiting.

## ENFORCING INTELLECTUAL PROPERTY RIGHTS IN FOREIGN TRADE ZONES

*Contribution prepared by Ms. Caridad Berdud, Attorney-Advisor Enforcement, Office of Policy and International Affairs, United States Patent and Trademark Office (USPTO), Alexandria, Virginia, United States of America*

Abstract: Foreign Trade Zones (FTZs), also known as Free Trade Zones, are beneficial economic zones that are typically designated areas outside of the customs jurisdiction of the host economy. Private entities are able to assemble, re-export, re-fuel or conduct other legitimate economic activity, avoiding costly tariffs, duties and other administrative fees. However, illegal activities also take place within FTZs, including money laundering, trade in counterfeit products and copyright piracy. Not only are IP right holders' interests adversely affected, but health and safety are also endangered – both for those in the FTZs as well as consumers at large. Lessons learnt and experiences gained in relation to legal frameworks, customs and border enforcement and new technologies may combat these activities and safeguard the utility of FTZs.

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WIPO/ACE/14/6

## NEW TECHNOLOGIES IN INTELLECTUAL PROPERTY ENFORCEMENT

*Contributions prepared by Switzerland and the European Union*

## SWISS EXPERIENCES WITH INTELLECTUAL PROPERTY ENFORCEMENT IN THE DIGITAL AGE

*Contribution prepared by Dr. Daniel Kraus, Professor of Innovation Law and Director, Centre for Intellectual Property and Innovation, University of Neuchâtel, Switzerland*

Abstract: This contribution offers a selective overview of Switzerland's experiences in combating counterfeit goods and piracy in an ever-evolving digital age. The contribution intends to be very practical; it covers voluntary industry solutions within the legal framework of a non-European Union member state. Opportunities and limits of blockchain solutions are also considered.

## NEW TECHNOLOGICAL OPPORTUNITIES FOR INTELLECTUAL PROPERTY RIGHTS PROTECTION AND ENFORCEMENT: BLOCKATHON – FIGHTING COUNTERFEITS THROUGH BLOCKCHAIN TECHNOLOGY

*Contribution prepared by Ms. Claire Castel, Head, Intellectual Property in the Digital World and Awareness Service, European Union Intellectual Property Office (EUIPO), Alicante, Spain*

Abstract: A recent study by the Organization for Economic Co-operation and Development and the European Union Intellectual Property Office (EUIPO) has shown that in 2016, counterfeit and pirated goods accounted for as much as 3.3 per cent of world trade and up to 6.8 per cent of European Union imports from third countries (in 2013, these figures were 2.5 per cent and 5 per cent respectively). These are alarming results. Enforcement officers have limited resources and technology, but blockchain could effectively support the fight against counterfeit

and pirated products. In 2018, the EUIPO and the European Commission launched a Blockathon competition as a catalyst for innovation to tap the potential of blockchain, by uniting the blockchain community's efforts to develop solutions that could easily track the provenance of products. The overall goal of the 2018 Blockathon was to provide enforcement authorities with tools to identify counterfeits and criminals quickly, assist legitimate companies in protecting their business assets and provide tools for consumers to make informed choices. The winning prototypes will now be tested.

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WIPO/ACE/14/7

STUDY ON INTELLECTUAL PROPERTY ENFORCEMENT  
MEASURES, ESPECIALLY ANTI-PIRACY MEASURES IN  
THE DIGITAL ENVIRONMENT

*Document prepared by Dr. Frederick Mostert, Professor of Practice, Dickson Poon School of Law, King's College, London, Research Fellow, Oxford Intellectual Property Research Centre, and Ms. Jane Lambert, Barrister, Gray's Inn, London, United Kingdom*

**Abstract:** This study provides an overview of current approaches to online copyright infringements, focusing specifically on the responses to piracy in the digital sphere across the world. The study explores the global problem of online piracy, the different types of digital tools and measures used by right holders, online platforms, governments and the judiciary. The study also incorporates a discussion on the issues concerning anonymity and the "whack-a-mole" problem and notes the challenge of balancing fundamental rights, such as artistic expression, free speech and data and privacy rights, and the protection of copyright. The study highlights the gaps within the legal measures used at present and the current discussion around a possible uniform approach in the form of global guidelines in response to the present dilemma.

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WIPO/ACE/14/8

ARRANGEMENTS TO ADDRESS ONLINE INTELLECTUAL  
PROPERTY INFRINGEMENTS

*Contributions prepared by Greece, the Russian Federation and the United Kingdom*

THE GREEK COMMITTEE FOR THE NOTIFICATION OF COPYRIGHT AND RELATED  
RIGHTS INFRINGEMENT ON THE INTERNET

*Contribution prepared by Dr. Maria-Daphne Papadopoulou, Head, Legal Department, Hellenic Copyright Organization (HCO), Athens, Greece*

**Abstract:** Greece and the Hellenic Copyright Organization (HCO), as the competent body at the national level in respect of copyright protection, target the problem of piracy, primarily digital piracy, through a number of initiatives. The most recent and innovative measure taken at the national level consists of the establishment and operation of the Committee for the Notification of Copyright and Related Rights Infringement on the Internet. This Committee oversees an administrative procedure, available to copyright and related right holders whose rights have been infringed, to promptly and effectively remove or block access to illegal creative content on the Internet. This document presents the active role of the HCO in copyright enforcement and awareness raising, thereafter describing the rationale behind the Committee's significant mandate and the objectives it is pursuing, as well as the conclusions reached after the first nine months of the functioning of the Committee.

## IMPROVING THE MECHANISMS TO COUNTER THE ONLINE DISSEMINATION OF PIRATED CONTENT IN THE RUSSIAN FEDERATION

*Contribution prepared by Mr. Vadim Subbotin, Deputy Head, Federal Service for the Supervision of Communications, Information Technology and Mass Media (Roskomnadzor), Moscow, Russian Federation*

**Abstract:** This contribution details the Russian legal framework for the protection of copyright works online. It specifically focuses on three mechanisms introduced to fight the dissemination of copyright-infringing content online: the introduction of a legal provision to allow the restriction of access to infringing websites; the introduction of a permanent blocking procedure in cases of repeated infringement; and the introduction of an extra-judicial mechanism targeting so-called mirror sites. The contribution also provides information on the impact of these mechanisms, outlining a vision for future developments in this area.

## THE UNITED KINGDOM POLICE INTELLECTUAL PROPERTY CRIME UNIT

*Contribution prepared by Ms. Elizabeth Jones, Senior IP Enforcement Policy Advisor, Copyright and IP Enforcement Directorate, Intellectual Property Office, Newport, United Kingdom*

**Abstract:** Online counterfeiting and piracy is an ever-increasing threat to businesses and consumers. To address this problem, in 2013, the United Kingdom (UK) Government created the Police Intellectual Property Crime Unit (PIPCU), dedicated to tackling serious and organized online piracy and counterfeiting (affecting digital and physical goods) and to protecting legitimate UK businesses. PIPCU is one element of the UK IP enforcement landscape, which aims to ensure that businesses and individuals are able to protect and enforce their IPRs.

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WIPO/ACE/14/9

THE BUILDING RESPECT FOR INTELLECTUAL  
PROPERTY DATABASE PROJECT  
*prepared by the Secretariat*

**Abstract:** This document describes a project undertaken by the WIPO Secretariat to assist Member States in the coordination of voluntary measures undertaken in accordance with the “follow-the-money” approach to copyright infringement. It comprises a secure, access-controlled online platform, to which authorized agencies in WIPO Member States may upload lists of web sites which deliberately facilitate the infringement of copyright. Legitimate players in the advertising industry are permitted as authorized users to employ the data contained in the lists to inform the placement of advertising on the Internet. By checking with the Building Respect for Intellectual Property Database (BRIP Database), advertisers can ensure that their advertising does not accidentally appear on copyright-infringing web sites. The intention is to reduce the flow of money to illegal web site operators, to protect brands from tarnishment and to reduce the risk that legitimate advertising may lend an appearance of legality to illegal web sites, to the confusion of consumers.

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WIPO/ACE/14/10

INITIATIVES TO PREVENT PAID ADVERTISING ON  
COPYRIGHT-INFRINGEMENT WEBSITES  
*Contributions prepared by Italy and the European Commission*

THE ROLE OF THE COMMUNICATIONS REGULATORY AUTHORITY OF ITALY IN  
ADDRESSING ONLINE ADVERTISEMENTS ON WEBSITES THAT INFRINGE  
INTELLECTUAL PROPERTY RIGHTS

*Contribution prepared by Mr. Giorgio Greppi, Deputy Director, Digital Rights Unit, Audiovisual Content Directorate, Communications Regulatory Authority (AGCOM), Rome, Italy*

Abstract: The Italian Communications Regulatory Authority (AGCOM) is in charge of online copyright enforcement. Since the beginning of its operations, 1,576 complaints have been filed by right holders, 49 per cent of which concerned audiovisual content on dedicated websites. This contribution explains the different competences AGCOM has and illustrates the practical consequences of its activities by way of concrete figures. The final section includes observations that AGCOM has been able to make in its copyright enforcement work on the frequent use of advertising content on pirate websites relating to different brands, including popular trademarks. Two issues deserve particular attention in this respect, namely: (i) brand safety with regard to advertised products; and (ii) the need for increased awareness of the so-called “follow the money” strategy to stop brands from sponsoring pirate websites. In both cases, right holders and intermediaries should be directly involved either in the prevention of the appearance of advertising content on infringing websites or in the enforcement of the underlying IPRs. Indeed, as long as the business models of infringing websites that rely on revenue from online advertisements remain intact, any strategy formulated to tackle online piracy will be ineffective.

STAKEHOLDERS' COOPERATION UNDER THE MEMORANDUM OF UNDERSTANDING  
ON ONLINE ADVERTISING AND INTELLECTUAL PROPERTY RIGHTS – AN UPDATE  
FROM THE EUROPEAN COMMISSION

*Contribution prepared by Ms. Natalia Zebrowska-Mamais, Policy Officer, Intellectual Property and Fight Against Counterfeiting, Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs (DG Grow), European Commission, Brussels, Belgium*

Abstract: Internet websites and mobile applications that provide access to content, goods or services infringing IPRs on a commercial scale use the sale of advertising space as one of their revenue sources. In the complex environment of online advertising, the misplacement of advertising is an issue, with brands themselves often being unaware of where their advertisements end up. To address this challenge the European Commission facilitated the conclusion of a voluntary agreement between representatives of the advertising sector. The signatories of the Memorandum of Understanding on Online Advertising and Intellectual Property Rights committed to cooperate in order to limit misplacement of advertising online. This initiative is part of the European Commission's “follow the money” approach to IPR enforcement, which consists of designing policy measures that identify and disrupt the money trail for commercial-scale IPR-infringing activities.

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WIPO/ACE/14/12

JUDICIAL AND PROSECUTORIAL DISCRETION IN  
INTELLECTUAL PROPERTY INFRINGEMENT  
PROCEEDINGS

*Contributions prepared by the Russian Federation, Saint Kitts  
and Nevis and the United Kingdom*

JUDICIAL DISCRETION IN INTELLECTUAL PROPERTY INFRINGEMENT PROCEEDINGS:  
THE EXPERIENCE OF RUSSIAN COURTS

*Contribution prepared by Mr. Vladimir Popov, Judge, Supreme Court of the Russian  
Federation, Moscow, Russia*

Abstract: This contribution presents a brief overview of the structure of Russian courts with jurisdiction over IP infringement cases and describes the recent adoption of a Plenary Ruling of the Supreme Court of the Russian Federation, generalizing judicial practice in this sphere. The contribution considers in detail the notion of judicial discretion and its main principles. It also analyzes situations in which a judge is required to exercise discretion when considering IP infringement cases. Determining liability is one of the vital aspects of court discretion in the consideration of IP infringement cases. This contribution focuses on three examples: confiscation of counterfeit goods, publication of information on infringements and determination of the amount of compensation.

PROSECUTORIAL DISCRETION IN INTELLECTUAL PROPERTY INFRINGEMENT CASES  
IN SAINT KITTS AND NEVIS

*Contribution prepared by Mr. Valston Michael Graham, Director of Public Prosecutions,  
Office of the Director of Public Prosecutions, Basseterre, Saint Kitts and Nevis*

Abstract: Determining whether a person who appears to have committed an IP crime should be prosecuted, requires a number of considerations and the balancing of competing interests. The use of prosecutorial discretion gives the prosecutor the freedom and authority to make judgments based on the law and on existing circumstances that he or she perceives. The discretion whether or not to prosecute IP crimes is subject to a number of constraints and challenges. This is in large part due to the cross-border nature of many IP infringements, which creates jurisdictional and legal challenges. Such challenges, however, must be duly weighed against the public interest considerations that may favor criminal prosecution.

EXERCISING THE DISCRETION TO GRANT ADDITIONAL DAMAGES UNDER SECTION  
97(2) OF THE UNITED KINGDOM COPYRIGHT DESIGNS AND PATENTS ACT 1988

*Contribution prepared by Ms. Charlotte Hart, District Judge of the Intellectual Property  
Enterprise Court, Business and Property Courts of England and Wales, High Court of Justice,  
London, United Kingdom*

Abstract: In infringement of copyright proceedings, a right holder who is seeking damages may seek an award of additional damages under Section 97(2) of the United Kingdom Copyright Designs and Patents Act 1988. The courts have found it difficult to decide upon the nature of such damages. The Court of Appeal has now ruled that Section 97(2) allows the court a wide discretion, which is more flexible than the common law classifications of aggravated damages (which are compensatory) and exemplary damages (which are punitive). Additional damages may include an element of restitution. The award may also be solely punitive, provided it does not amount to an abuse of the infringer's rights. There is little

guidance on the quantification of additional damages awarded under Section 97(2), which may result in inconsistency and uncertainty for litigants. There appears to be no bar to an award being made by way of a percentage uplift on ordinary damages.

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WIPO/ACE/14/13

NATIONAL AND REGIONAL EXPERIENCES WITH WIPO'S  
CAPACITY-BUILDING ACTIVITIES IN THE AREA OF  
BUILDING RESPECT FOR INTELLECTUAL PROPERTY  
*Contributions prepared by Botswana and the Eastern  
Caribbean Supreme Court*

WIPO'S CAPACITY-BUILDING ACTIVITIES AND SUPPORT FOR TRAINING ACTIVITIES IN  
THE AREA OF BUILDING RESPECT FOR IP AND IP ENFORCEMENT IN BOTSWANA

*Contribution prepared by Mr. Conductor Paul Masena, Registrar General, Companies and  
Intellectual Property Authority (CIPA), Gaborone, Botswana*

Abstract: After an introduction to Botswana, the Companies and Intellectual Property Authority (CIPA) and the IP laws in force in Botswana, the contribution describes the assistance Botswana received in recent years from the World Intellectual Property Organization (WIPO) in form of both legislative assistance in the area of IP enforcement and the organization of several building respect for IP capacity-building activities. To further support capacity building in the area of IP enforcement in Botswana, WIPO, in collaboration with CIPA, also developed a customized training manual entitled *Investigation and Prosecuting Intellectual Property Crimes in Botswana* for use by law enforcement authorities and prosecutors. The contribution also reports on a number of improvements in IP enforcement that Botswana made following the assistance provided by WIPO.

THE EASTERN CARIBBEAN SUPREME COURT AND CAPACITY-BUILDING IN  
INTELLECTUAL PROPERTY

*Contribution prepared by the Honorable Ms. Gertel Thom, Justice of Appeal, Court of Appeal,  
and Chairperson, Judicial Education Institute, Eastern Caribbean Supreme Court, Castries,  
Saint Lucia*

Abstract: This contribution considers the importance of capacity building for the administration of justice in the Organization of Eastern Caribbean States in the area of enforcing IPRs and the benefits of assistance received from the WIPO in the training of judicial officers. IPRs are of little value unless they can be enforced effectively and expeditiously. To accomplish this goal, judicial officers must be properly trained to adjudicate in IP cases. WIPO, with its own expertise and access to external experts in this field, has proven that it is well equipped to provide training in various areas of IP, including on civil and criminal remedies that a court may grant in infringement proceedings. The contribution concludes with a suggestion of how WIPO could enhance the training of judicial officers.

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