

Advisory Committee on Enforcement

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COORDINATING INTELLECTUAL PROPERTY ENFORCEMENT

Contributions prepared by Brazil, Chile, Kazakhstan, the Republic of Korea, Saudi Arabia and the Container Control Program

1. At the fourteenth session of the Advisory Committee on Enforcement (ACE), held from September 2 to 4, 2019, the Committee agreed to consider, at its fifteenth session, among other topics, the “exchange of information on national experiences relating to institutional arrangements concerning IP enforcement policies and regimes, including mechanisms to resolve IP disputes in a balanced, holistic and effective manner”. Within this framework, this document introduces the contributions of four Member States (Brazil, Chile, Kazakhstan and the Republic of Korea) and the Container Control Program (CCP) (a joint program of two Observers (the United Nations Office on Drugs and Crime (UNODC) and the World Customs Organization (WCO)) on their experiences with coordinating intellectual property (IP) enforcement.
2. The contribution by Brazil discusses how the National Film Agency (ANCINE) fights piracy in the audiovisual industry through, *inter alia*, enhancing coordination between the public and the private sector, assisting with police investigations and enforcement, concluding cooperation agreements with online marketplaces to eradicate the sale of prohibited equipment, preventing advertisement-based funding of illegal websites, blocking infringing websites and monitoring the progress of draft laws.
3. The contribution by Kazakhstan reports on ongoing labeling and traceability initiatives and the development of associated information technology systems. It also addressed inter-agency cooperation in the framework of the Comprehensive Action Plan to Combat the Shadow Economy 2021-2023 and the IP Roadmap. Finally, the contribution summarizes the National Institute of Intellectual Property’s (KazPatent’s) continued efforts to increase IP awareness, particularly among young people.

4. The two contributions by the Republic of Korea address the investigation and prosecution of IP crime. The Korean Intellectual Property Office (KIPO) reports on the work of its special judicial police, which has led to increased efficiency in investigating criminal offences involving trademarks, patents, trade secrets and designs. The Daejeon District Prosecutors' Office is the competent authority to prosecute IP crimes and aims to become a role model of specialization for prosecutors and investigators. Its contribution describes the specific measures it developed to fight IP crime through capacity building and cooperation with other relevant organizations. It also describes the use of alternatives to prosecution, namely criminal mediation or conditional suspension of prosecution.

5. The contribution by Saudi Arabia discusses the development and implementation of the Intellectual Property Respect Officer Program, an initiative developed by the Saudi Authority for Intellectual Property (SAIP) to raise awareness, increase compliance and build respect for IP in both the private and public sector.

6. The contributions by Chile and the CCP underscore the importance of effective border measures and customs procedures. The National Customs Service of Chile describes its role and experience with the application of boarder measures, specifically highlighting its monitoring, detection and inspection activities, the National Intellectual Property Plan and technological tools used. The CCP aims to build capacity in participating countries in order to prevent the cross-border movement of illicit goods, including counterfeits. To that end, it establishes, trains and supports inter-agency control units comprised of customs, national police, anti-narcotics forces and other law enforcement agencies. The contribution describes challenges encountered and lessons learned in CCP's work to curb trade in IP-infringing goods.

7. The contributions are in the following order:

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[Contributions follow]

BRAZILIAN EFFORTS IN THE FIGHT AGAINST PIRACY AND INTELLECTUAL PROPERTY CRIMES

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ABSTRACT

The mission of the National Film Agency of Brazil (ANCINE) is to promote, regulate and oversee the audiovisual industry for the benefit of Brazilian society. To this end, ANCINE carries out strategic intelligence activities as part of the systematic fight against audiovisual piracy, mainly by: promoting coordination between public agencies and private entities to combat copyright violations more efficiently; providing grants and assistance for police investigations and enforcement against copyright violations and for inspection measures promoted by other public organizations to tackle such violations; proposing cooperation agreements with online marketplaces to stop the sale of prohibited equipment; preventing the advertisement-based funding of illegal websites; developing mechanisms to block websites that predominantly distribute illegal content; and monitoring the progress of draft laws in order to develop modern legislation that provides more efficient mechanisms to combat these illegal activities.

I. INTRODUCTION

1. ANCINE's mission is to promote, regulate and oversee the audiovisual industry for the benefit of Brazilian society. To this end, it carries out strategic intelligence activities as part of the systematic fight against audiovisual piracy. The copyright law in articles 46 to 48 indicates situations where copyright protections are limited, however activities that go beyond these limits, especially on a commercial scale, are considered illegal. Copyright is protected by both private and public law in the Brazilian legal system, hence it is not considered only a private matter.

2. Brazil is among the countries with highest number of visits to sites that distribute illegal audiovisual content. Audiovisual piracy costs Brazil an estimated USD 5 billion annually and has a direct impact on its socioeconomic development: circumventing legitimate means of access to audiovisual content results in the loss of employment and income — and consequently tax revenue — and is a proven source of funding for organized crime. The risk of disruption to the audiovisual industry is real and demands a systematic and integrated approach.

II. ANCINE'S ACTIONS TO TACKLE PIRACY

3. ANCINE's main anti-piracy activities are:

- promoting coordination between public agencies and private entities to combat copyright violations more efficiently;
- providing grants and assistance for police investigations and enforcement against copyright violations;

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

- providing grants and assistance for inspection measures promoted by other public organizations against copyright violations;
- proposing cooperation agreements with online marketplaces to stop the sale of illegal streaming devices;
- preventing the advertisement-based funding of illegal websites;
- monitoring the progress of draft laws in order to develop modern legislation that provides more efficient mechanisms to combat these illegal activities; and
- developing mechanisms to block websites that predominantly distribute illegal content.

4. In 2018, ANCINE created a unit for combating audiovisual piracy, with a dedicated team, which immediately joined the National Council for Combating Piracy and Intellectual Property Crimes of the Ministry of Justice and Public Security. The Council is an advisory board composed of public institutions and private entities linked to IP protection in all of Brazil's main industries, and is tasked with establishing guidelines for the formulation and proposition of the national plan to combat piracy, the resulting tax evasion and IP crimes.

5. Aiming to replicate that public–private partnership, but with an exclusively audiovisual focus, ANCINE created a technical committee for combatting audiovisual piracy that brings together representatives across the entire industry, this is a discussion forum which meets every two months. The committee's objectives are: to strengthen the relationship between ANCINE, other government agencies, private entities, public institutions and civil society in promoting the fight against piracy; to stimulate debate on tackling piracy; and to facilitate the coordination of the various stakeholders involved in anti-piracy efforts in Brazil.

6. Since the committee's establishment, ANCINE has had access to a constant flow of information and data from private entities, including data produced by the audiovisual industry on possible illegal activities, and full access to federal government agencies. ANCINE started to check the information received and use it to produce intelligence reports for federal agencies. All this flow of information and data respects the data protection law recently edited.

7. This exchange of information enabled the launch of Operation 404 — Brazil's largest and most successful police operation against digital piracy — which is coordinated by the Ministry of Justice. Over the course of three phases, the operation has resulted in the blocking of more than 1,000 illegal streaming sites, the arrest of suspects and the seizure of luxury goods resulting from criminal activity and equipment.

8. ANCINE is now acting throughout the national territory to support police agencies and the Federal Revenue Service at customs posts. It has expanded its actions beyond data production to include technical assistance in executing search-and-seizure warrants, and training on IP violations.

9. The sale of illegal streaming devices is also a major concern. In this regard, ANCINE's main role has been to provide training for inspection agents of the Federal Revenue Service in order to prevent such equipment from entering the country, and for the Federal Highway Police in order to increase monitoring of the movement of these goods on federal highways. As a result, 1.5 million illegal streaming devices were seized in 2020–2021, with an estimated value of USD 150 million.

10. Much of that equipment has been destroyed and the waste has been disposed of sustainably. However, in an unprecedented partnership between the Federal Revenue Service and universities in the State of Minas Gerais, research teams are looking for ways to remove the offending features and reuse the equipment. In one project, seized illegal streaming

devices were transformed into 800 computers that were subsequently donated to public schools for educational purposes. In other projects, the illegal equipment is being repurposed to monitor attendance at public hospitals, monitor cameras in police vehicles and control and identify pests in agribusiness, among other uses. In this way, the assets of crime are being reused for the benefit of society.

11. Moreover, ANCINE has signed cooperation agreements with the main online marketplaces in Brazil to prevent their registered users from advertising illegal IPTV lists and illegal streaming devices. Thanks to these cooperation agreements, more than 30,000 illegal advertisements have been removed.

12. Another key area of ANCINE's work is to tackle the revenue sources and monetization of piracy in Brazil. Reducing or eliminating the financial gains obtained from piracy discourages illicit activity, specifically affecting piracy on a commercial scale. ANCINE therefore signed a cooperation agreement with WIPO to join WIPO ALERT, a project aimed at reducing the flow of money to operators of illegal websites and protecting the reputations of brands against damage arising from their unintentional advertisement on illegal websites. ANCINE has listed more than 300 offending sites to date.

13. Regarding the development of copyright legislation, draft laws that could make enforcement much more efficient — either by criminalizing certain conduct, such as the illicit acquisition of pay TV signals or by applying adequate penalties for criminal convictions — have been passing through the National Congress for years.

14. Lastly, ANCINE's most important area of action has been the search for ways to block websites that illegally distribute audiovisual content. All links in the audiovisual chain must pursue the protection of online content. Solutions that respect relevant legal principles while providing an effective response to the fight against digital piracy need to be found. The United Kingdom and Portugal have successfully adopted mechanisms to block access to illegal content distribution sites. The website blocking model under development in Brazil was inspired by the work of the United Kingdom's Police Intellectual Property Crime Unit and Portugal's General Inspectorate of Cultural Activities.

15. Site blocking may be the only way to stop, or at least contain, the damage that piracy causes not only to the right holder, but also to those who depend on income from the legal exploitation of audiovisual works and the industry. That damage only increases with time. Site blocking is a quick and effective countermeasure and, if carried out with technical precision and in line with internationally accepted standards, it does not violate due process of law.

16. ANCINE proposes administrative orders to block websites, considering that these measures are among the legal attributions of administrative authorities, as long as they respect the principles of legality, proportionality, administrative morality and the observance of fundamental rights, especially due to legal process. It is hoped that these website blocking processes will finally be in operation during 2022.

III. OTHER ACTIONS TO TACKLE IP CRIME

17. With regard to IP infringement in general, Brazil ran advertising campaigns during the pandemic to warn against the danger of fake vaccines. The campaigns were created in partnership with the United Kingdom Intellectual Property Office.

18. The National Plan for Combating Piracy 2022–2025 was approved earlier this year. It contains short-, medium-, and long-term actions for achieving 62 targets. The plan addresses the issue through four themes:

- Institutional action: Coordination between different institutions will be prioritized to promote dialogue, interaction and cooperation, with discussions regarding the establishment of specialized police stations to combat piracy and IP infringement, and legislative improvements.
- Prevention and protection: Projects to improve measures to repress IP infringements will be implemented and will involve public institutions from all areas of government and civil society organizations.
- Training and education: This covers both training for public agents on combating piracy and related crimes, focusing on the exchange of information and good operational and investigation practices, and cooperation agreements with universities on including in their training programs initiatives focused on piracy and IP crimes.
- Awareness raising: The aim is to raise consumer awareness about the dangers and environmental and economic damages to Brazil resulting from piracy, by informing consumers that, when they buy pirated products, they feed the drug and arms traffic of criminal organizations, cause risks to their own health and put themselves at the mercy of products with no quality control. For this purpose, the plan provides for awareness campaigns, booklets, academic events and other resources and activities.

19. In closing, the driving motivation behind the anti-piracy work done by ANCINE can be summarized in a quotation from Portuguese lawyer Daniela Antão: “Protecting creativity and the creative industries is, if nothing else, at least a moral obligation, because culture is the ultimate inspiration of humanity. Doing good is something that we should not be ashamed to defend, quite the opposite”.

[End of contribution]

THE ROLE AND EXPERIENCE OF THE NATIONAL CUSTOMS SERVICE OF CHILE WITH BORDER MEASURES

*Contribution prepared by Ms. Mirta Cecilia Letelier Olmos, National Head, Intellectual Property and Public Health, National Customs Directorate, National Customs Service of Chile, Valparaíso, Chile**

ABSTRACT

The National Customs Service of Chile has seized significant quantities of illicit goods in recent years under its operational inspection programs. The Service's efforts to monitor and counter trafficking in counterfeit goods have won recognition at home and abroad.

Over the past decade, counterfeiting and piracy practices have been dynamic, shifting from traditional to non-traditional products and directly threatening public health and safety.

It is essential for regulatory and law enforcement bodies to exchange information and work together to combat this type of trafficking. That is particularly important, given that it has been shown that such counterfeit goods not only affect the economic interests of companies but also encourage other types of crime, such as money laundering and the financing of terrorist groups.

I. THE LEGISLATIVE FRAMEWORK FOR BORDER MEASURES IN CHILE

1. In 2003, Law No. 19,912¹ was adopted in Chile. The Law aligns the legislation indicated therein with the World Trade Organization (WTO) agreements signed by Chile. In particular, it includes regulations on the enforcement of intellectual property (IP) rights at the border (Articles 51 to 60 of the Agreement on Trade-Related Aspects of Intellectual Property Rights).

2. Article 16 of Law No. 19,912 stipulates that “the customs authority may *ex officio* suspend the release of the goods when it is clear from a basic inspection of the goods that they bear counterfeit trademarks or infringe copyright. In these cases, customs shall inform the right holder, if known, of the potential infringement, so that the right holder may exercise his right to request the suspension and his rights derived from preceding regulations and, in particular, so that he may provide information about the authenticity of the goods. Customs shall file a corresponding complaint, in accordance with the Law”.

3. An amendment to Article 16 of the Law No. 19.912 entered into force on March 13, 2017. Its aim was to extend the duration of the *ex officio* suspension of the release of goods from five to 10 working days, thereby addressing the problem that the National Customs Service could only suspend the release of allegedly IP-infringing goods for five working days. Trademark owners felt that the period was insufficient to exercise their rights before the National Customs Service and the courts. Prolonging the suspension period since 2017 for allegedly IP-infringing good has undoubtedly helped right holders use border measures.

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

¹ Law N. 19.912 of October 24, 2003, which brings Law No. 17.3376 into line with the World Trade Organization agreements signed by Chile (consolidated text from March 13, 2017). Available at: <https://wipolex.wipo.int/en/text/583956>.

4. Furthermore, the National Customs Service of Chile updated its regulations through Resolution No.1573² of the National Director of Customs, which was issued on July 1, 2021, and entered into force on August 14, 2021. This new regulation improved the IP enforcement procedures at the border by standardizing inspection processes, the formatting of all documents and the customs clearance suspension orders. Furthermore, it contributed to improving the quality of the data collected and to saving time throughout the inspection procedure.

II. THE DYNAMIC NATURE OF PIRACY AND COUNTERFEITING

5. Over the last decade, cases of piracy and counterfeiting have increased and evolved from traditional products such as toys, textiles, footwear and suitcases, to non-traditional goods such as auto parts, bearings, dental supplies, cellphones and cellphone accessories, medical devices, cosmetics and other high-value technology components that significantly impact the safety of equipments. Counterfeit pharmacological products are even more problematic and concerning as they pose a direct threat to the population and constitute a serious public health issue.

III. THE ROLE OF THE NATIONAL CUSTOMS SERVICE OF CHILE

6. In view of the above, permanent and increasing collaboration between regulatory and law enforcement bodies is necessary to combat this type of infringement since counterfeiting not only affects the economic interests of companies but also directly impacts safety, public health and the environment. In turn, it also fosters other types of crime, such as money laundering and the financing of terrorist groups.

7. Considering the harm that these practices can cause to society, it is of the utmost importance to focus on monitoring IP rights. To this end, it is essential to analyze information to detect high-risk activity in relation to counterfeit goods. This is done through the work of the risk analysis units of the regional directorates and the customs administrations of Chile using risk management techniques, intelligence and networking.

8. Moreover, every year the National Customs Service of Chile creates inspection programs³ to minimize the risks of counterfeiting and piracy. These programs include training on trademarks, technical workshops, work groups and operations in the primary zone⁴ and in the secondary zone⁵.

² Resolution No. 1573 available at: https://www.aduana.cl/aduana/site/docs/20210104/20210104143625/resolucion_exenta_n_1573_fecha_01_07_2021.pdf.

³ These are the annual operational programs of each Regional Customs Service and Customs Administration regarding the extreme and high risks that the National Customs Service has prioritized in coordination with the central level. Various measures and appropriate inspections are carried out to mitigate those risks effectively. The programs cover intellectual property, in view of the specific illicit trafficking inspection objectives.

⁴ The primary zone is where the physical maritime and land operations involving the mobilization of goods are carried out. Regarding its jurisdiction, it is a customs area in which goods are to be loaded, unloaded, received or checked for their entry to or exit from the territory. In the primary zone, the National Customs Service has the authority to register people, baggage, goods and means of transport. It is possible to request customs declarations and to suspend the release and seize goods.

⁵ The secondary zone is the territory and territorial waters that corresponds to each customs according to the distribution made by the National Director of Customs to establish the competence and obligations of each customs. In the secondary zone, the powers of the customs consist of requiring declarations in operations of interest and ordering the entry and registration to locations where the goods are found and order the seizure if documents, records and goods.

9. In 2021, suspensions of release of goods at the border decreased by 0.56 per cent compared to 2020, whereas the quantity of goods (units) increased by 23.87 per cent. Ultimately, the results were positive with regard to detecting IP-infringing goods, particularly those goods that pose a threat to public health and safety. In 2021, more than 10.8 million IP-infringing goods were suspended from release. They were estimated to have a total commercial value of around USD 71.89 million.

10. 2021 was a successful year with regard to the illicit trafficking of IP, despite the challenges posed by the health emergency, which led to a reduction in the number of operational staff members and in importing operations, which is the customs activity most associated with border measure procedures. Although the first months saw the lowest number of suspensions, an upturn in the second half of the year should be noted, particularly in October, November and December.

11. The good joint and coordinated work is reflected in the successful monitoring results that the National Customs Service achieved. Since 2019, the number of border measure procedures are as follows: 1,252 in 2019, 1,612 in 2020 and 1,604 in 2021. In terms of the quantity of goods seized, 13 million units were reported in 2019, 8.7 million units in 2020 and 10.8 million units in 2021.

IV. THE NATIONAL INTELLECTUAL PROPERTY PLAN

12. The National Intellectual Property Plan focuses on directing central level efforts to improve the quality of inspections for counterfeit goods. By providing information and other tools, it contributes to the risk analysis and intelligence work carried out by officials who work in the field. Another objective of the Plan is to monitor and analyze IP results on a monthly basis by producing statistical summaries to identify the product types, routes, consignors, consignees, etc., that are most involved in the importation of counterfeit goods.

13. The National Intellectual Property Plan is an annual internal inspection plan created by the National Customs Service of Chile. Over the last 10 years, planning was carried out through integrated inspection plans and regular inspection plans. Since 2022, planning has been carried out through an operational inspection program. Both types of planning have specific illicit trafficking inspection objectives regarding the risks that the National Customs Service has prioritized in collaboration with the central level. Various measures or appropriate inspection activities are carried out with regard to these risks to mitigate them effectively.

14. Although the Plan establishes lines of action for the National Customs Service, other public and private organizations are involved in the various measures and inspection activities, which include training, operations and meetings.

15. Likewise, the National Intellectual Property Team is constantly supporting the various Regional Teams to improve results. One of the relevant activities organized every year at the national and regional levels is training on trademarks to improve officials' ability to detect counterfeit goods, specifically in cases involving non-traditional goods and depending on the local risks that each customs unit faces.

16. Another important point is the coordinated work carried out by regulatory and law enforcement bodies, which share information and carry out joint actions to combat this type of illicit trafficking. In practice, in matters relating to IP, the National Customs Service works jointly with public organizations, including the National Institute of Industrial Property (INAPI), the Undersecretariat of International Economic Relations (SUBREI), the Intellectual Property Crime Investigation Brigade (BRIDEPI), the National Consumer Service (SERNAC) and the

Superintendency of Electricity and Fuels (SEC). In the private sector, the National Customs Service works with the National Chamber of Commerce (CNC), the Illicit Trade Observatory (OCI) and various trademark representatives. Information is exchanged with all of these public and private institutions regarding the seizure and destruction of products that may infringe intellectual property rights. Operations are carried out directly in warehouses or commercial premises, training of officials is provided (technical workshops, training on trademarks, seminars), cooperation with regard to research is undertaken, dissemination and community outreach is ensured and regulatory amendments are made.

V. TECHNOLOGICAL TOOLS

17. Over the last years, the National Customs Service of Chile has also used various tools for monitoring, controls and inspections that have increased the number of IPR enforcement procedures at the border. These technological tools include PENTAHO (to create statistical reports), SAS (to create predictive models), a selection tool (operations involving IP-related risks are selected based on specific judicial decisions) and starting July, the “trademark administration system” which will be used. This is an online platform created to support, control and monitor IP enforcement procedures at border, which results in the detection of goods that infringe the Intellectual Property Law. The main objective of this system is to unify the suspension procedure in all regional directorates and customs administrations.

VI. OUTLOOK TOWARDS THE FUTURE

18. The general objective for 2022 is to continue implementing technological improvements to the suspension procedures to make it easier for customs front-line officials to enforce IP rights at the border. The intention is to continue enhancing selection through computerized risk management systems.

19. In the coming years, the National Customs Service of Chile will continue to strengthen the capacities set out in Law No. 19,912 on border measures. There are plans to further increase exchange of information, especially risk analysis reports to provide more feedback to regional teams, so that the risks that IP-infringing goods pose can be addressed across the board.

20. The National Customs Service of Chile will continue to strengthen the skills of front-line officials so that they can identify various infringing goods through a basic inspection. Likewise, it will continue to provide regional training, in accordance with the local risks that each regional team faces.

21. Lastly, the National Customs Service of Chile will continue to search for more partners at the national and international levels to combat the illicit trafficking of goods that infringe IP rights and it will continue to join forces with public and private organizations.

[End of contribution]

GOVERNMENT INITIATIVES, ENHANCED COOPERATION AND EXPANDED OUTREACH AND AWARENESS-RAISING ACTIVITIES IN KAZAKHSTAN

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ABSTRACT

Kazakhstan is keenly aware of the role of intellectual property (IP) in the development of the global innovation economy and makes every possible effort to ensure its protection and enforcement by following international best practice.

The National Intellectual Property Institute of Kazakhstan (KazPatent) is constantly working to increase the general public's IP legal literacy. KazPatent also works closely with government agencies involved in combating infringements of IP rights (IPRs), which have an adverse impact on the dynamic creative industries – technology, science, creativity, the media and entertainment.

KazPatent's IPR Center is implementing a range of awareness-raising programs designed to disseminate knowledge as broadly as possible among young people, local law enforcement agencies involved in IPR enforcement and IPR-intensive industries on how to protect IPRs (i.e., registration procedures) and on the risks associated with infringements of those rights (i.e., legal liability and consequences).

I. INTRODUCTION

1. The Government of Kazakhstan attaches particular importance to the protection and enforcement of intellectual property rights (IPRs). The President of Kazakhstan, Kassym-Jomart Tokayev, has stressed on several occasions the important role that IP has to play in developing new fields in the country's economy as well as the need for effective enforcement of IPRs.

2. The authorities in Kazakhstan work proactively to enforce IPRs and, in particular, to combat counterfeiting. Illegal intellectual property (IP) activity forms part of the shadow economy and creates challenges for legitimate businesses to compete with those engaged in low-cost illegal activities. As a result, legitimate businesses often bear the cost of IP-infringing activity. Moreover, the State loses income because illicit trade does not generate tax revenues, employment statistics become distorted and the market is flooded with illegally manufactured goods, many of which pose a threat to public health.

3. Among the government authorities working to combat IPR infringements in Kazakhstan are the IPR Department of the Ministry of Justice, local judicial bodies, law enforcement agencies, Customs, the Economic Investigations Service, the Antitrust Authority and the Ministry of Information and Public Development. As an agency of the Ministry of Justice, the National Intellectual Property Institute of Kazakhstan (KazPatent) carries out analytical studies

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on the protection and enforcement of IPR and works to raise the general public's awareness of IP issues and increase their legal literacy on the subject.

II. PUBLIC INITIATIVES TO COMBAT COUNTERFEIT GOODS

A. LABELING AND TRACEABILITY

a) Pharmaceutical Goods

4. While targeted operations are an important tool in combating trade in counterfeit goods, they do not always have the same impact as large-scale operations. The best way of impeding criminal networks trading counterfeits is to make it as difficult as possible for counterfeit goods to reach consumers, while also monitoring the movement of legal goods. Labeling is currently among the most effective means of achieving this. Labeling systems, whether private sector or government-administered, make it possible to distinguish goods by various characteristics. They use advanced technology to track the flows of goods. The main purpose of product labeling is to protect consumers from counterfeit and illicit goods.

5. Labeling and traceability procedures for pharmaceutical products are being introduced across the Eurasian Economic Union with a view to increasing the share of legal products on the market and enhancing government controls with regard to labeled groups of goods. Moreover, mandatory labeling helps improve forecasting and statistical accuracy, raise public awareness of the importance of product quality and controls to ensure that goods are genuine, and boost competition in this segment of the Eurasian market¹.

6. The Ministry of Health conducted a pilot project on pharmaceutical product labeling and traceability between August 1, 2019, and July 31, 2021. National pharmaceutical companies, importers, wholesale distributors of pharmaceuticals, retail pharmacies and medical institutions took part in the pilot project. In March 2020, recommendations for labeling methods were adopted. A list of participants in the pilot project, together with a list of pharmaceutical products to be included, were drawn up. On October 6, 2020, the Comprehensive Plan for the Development of the Pharmaceutical and Medical Industry for the period 2020-2025, which includes the labeling of pharmaceutical products was adopted.

7. From January to July 2021, participants in the pilot project labeled about 90,000 packages destined for sale to the public at domestic and foreign production sites. Labeling was done by directly applying a code to the packaging or by sticking on ready-made labels with a code. For example, such labels were used in the case of the QazVac coronavirus vaccine.

8. On September 10, 2021, the Ministry of Trade and Integration of Kazakhstan notified the Eurasian Economic Commission of plans to make pharmaceutical product labeling mandatory in Kazakhstan from July 1, 2022. Under the plan, digital pharmaceutical product labeling will be introduced gradually, with phase one starting on July 1, 2022. Some one per cent of the total volume of pharmaceutical products will be labeled. To that end, a list of 93 pharmaceutical products produced by four Kazakh and 12 foreign manufacturers has been drawn up. Under phase two, from October 1, 2022, the list will expand to cover 20 per cent of pharmaceutical products. Under phase three, from January 1, 2023, the list will grow to cover 60 per cent of pharmaceutical products and the tracing of labeled pharmaceutical products will begin. Phase four, which foresees 80 per cent of pharmaceutical products manufactured in and imported into the country being labeled, is scheduled to start on April 1, 2023. Under the fifth and final phase, from July 1, 2023, the labeling of all pharmaceutical products manufactured in Kazakhstan or imported into the country will be mandatory.

¹ Order No. 132-r of the Prime Minister of Kazakhstan of October 6, 2020, approving the Comprehensive Plan for the Development of the Pharmaceutical and Medical Industry for the period 2020-2025.

9. Labeling involves the use of an identification technique comprising a unique sequence of characters in the form of a machine-readable, two-dimensional GS1 DataMatrix barcode². The barcode contains information about the manufacturer, country of origin, serial number and provides protection against tampering³.

b) Footwear

10. In line with the Agreement on the Labeling of Goods by Means of Identification in the Eurasian Economic Union of February 2, 2018, digital labeling for footwear has been mandatory in Kazakhstan since November 1, 2021. Accordingly, the production and import of unlabeled footwear into the country's territory is prohibited⁴. The Data Matrix GS1 barcode system is also used for labeling footwear.

c) Other Goods

11. As part of its efforts to combat counterfeiting in the marketplace, Kazakhstan made labeling mandatory for fur products in 2019 and for tobacco products from October 1, 2020. Mandatory labeling for alcohol, dairy and light industry products⁵ will be introduced in 2022⁶.

B. INFORMATION TECHNOLOGY SYSTEMS TO COMBAT IP INFRINGEMENTS

12. Since October 2017, Customs authorities have been using the Astana-1 e-declaration system to prevent the import of counterfeit goods. The system's IP control module includes a risk management system that covers goods listed on the Customs IP assets register. The Astana-1 system is part of the one-stop portal for exports and imports run by the State Revenue Committee of the Ministry of Finance and is used for the input, processing and storage of data concerning the work of Customs.

13. As part of the overall Digital Kazakhstan initiative, the aim of which is to improve quality of life around the country through the use of digital technology, the ISMET.KZ platform has been launched⁷. It provides access to the information system on the labeling and traceability of goods (see above), including a national product catalog and order management center. Various actors involved in trade, such as local manufacturers, importers or retailers, register with ISMET

² Unlike with, for example, QR codes, the main advantages of a DataMatrix code are that it is durable and that a large amount of information can fit into a small area. The DataMatrix code contains information about its own recovery. So, even if the labeling is damaged in transit, the scanner will still be able to read it. GS1 is a not-for-profit international organization that develops and maintains standards, including barcodes. More information is available at: <https://www.gs1.org/about>.

³ Order of the Minister of Health of the Republic of Kazakhstan, dated May 30, 2022, amending Order No. KR DSM-11 of the Minister of Health, of January 27, 2021, on approval of the rules for labeling drugs and medical devices (<https://adilet.zan.kz/rus/docs/V2200028315>).

⁴ For more information, see <http://www.eurasiancommission.org/ru/nae/news/Pages/29-03-2019-1.aspx>.

⁵ Light industries are less capital-intensive than heavy industries and produce smaller consumer goods (such as clothing and bed, dining, bath and kitchen linen).

⁶ For more information, see

https://markirovka.ismet.kz/content/dam/ocp/companies/Markirovka/new_design/Приложение%201.%20Национальный%20каталог%20товаров.%20Инструкция%20пользователя.pdf.

⁷ The name Ismet.kz is formed by a combination of abbreviations: IT (information technology) and SME (small and medium-sized enterprises). It also reflects the Turkish word *ismet*, which means adherence to the principles of morality, honesty and purity.

in order to create a product card describing the product's characteristics and then order labeling barcodes (data matrix) for that product via the order management center⁸.

14. In 2021, the Digital Economy Development Center, the only labeling and traceability operator in Kazakhstan, created the NAQTY ÓNIM mobile app⁹, which allows consumers to verify the authenticity of goods by scanning a DataMatrix code.

15. The manufacturer puts the DataMatrix code on the package and sends it to the distributor. The distributor then receives and scans the batch and sends it on to stores and supermarkets. Upon receiving a new batch of goods, the store reads the codes on the packages and sells the legal goods. When the goods reach the cash register, the 2D scanner reads the labels and the code is taken out of circulation. The customer can also read the labels using the mobile app.

16. At the time of writing, the app provides up-to-date information on footwear and tobacco products: the manufacturer, date of manufacture, consumer characteristics and permits for the goods.

17. Under amendments to the Consumer Rights Protection Act, adopted in 2020, a unified consumer protection site, e-tutynushy.kz¹⁰, was launched in January 2021. This platform is a one-stop shop where consumers, service providers, non-governmental organizations (NGOs) and government agencies can exercise their rights by submitting claims and monitor their progress. The platform contains information on consumer rights and on human rights advocates who can be approached when such rights are infringed, and enables users to file complaints directly with representatives of the commercial entity concerned. Under the Act, commercial entities are obliged to respond to complaints and to provide assistance. Where they fail to do so, the complaints are brought before the competent authorities, which take the necessary legal measures to protect consumer rights. At the time of writing, the platform in a pilot phase and only entities that have volunteered to take part are currently registered.

C. THE COMPREHENSIVE ACTION PLAN TO COUNTERACT THE SHADOW ECONOMY

18. In September 2021, the Government of Kazakhstan approved a comprehensive action plan to combat the shadow economy in the period of 2021-2023. The plan includes measures aimed at helping the public avoid purchasing low-quality and counterfeit products¹¹.

19. The objectives of the plan are to: (a) strengthen coordination mechanisms between the relevant government agencies and bodies; (b) analyze current IPR protection systems; and (c) draft proposals for improving those systems to better curtail the circulation of counterfeit goods.

20. On November 30, 2021, the Minister of Justice ordered the establishment of the Interdepartmental Working Group on Combating Counterfeit Goods, comprising representatives of relevant government agencies and of the National Chamber of Business.

⁸ For more information, see <https://markirovka.ismet.kz>.

⁹ NAQTY ÓNIM mobile app: <https://apps.apple.com/ru/app/naqty-ónim/id1544720295>. Information on mandatory product labeling is available at <https://markirovka.ismet.kz/ru/Naqtyonim>.

¹⁰ Unified consumer protection complaints platform: <https://e-tutynushy.kz/main>.

¹¹ Decree No. 644 of the Government of the Republic of Kazakhstan of September 21, 2021. Available at: <https://adilet.zan.kz/rus/docs/P2100000644>.

21. The Group's mandate includes: (a) identifying shortcomings in the current IPR protection system in Kazakhstan (for instance, coordination issues among government agencies, the need to improve the administrative, legal and Customs response to IPR infringements, the protection of IP under criminal law and IP protection on the Internet); (b) determining how to resolve existing issues following international best practice; (c) conducting joint efforts to raise public awareness of the harm and risks associated with the acquisition and use of counterfeit products; and (d) encouraging right holders to enforce their IPRs. The Group meets once every two months and its standing body is KazPatent's IPR Center.

D. IP ROADMAP

22. Since 2020, the Ministry of Justice in Kazakhstan has been working on an IP roadmap for the coming years with a view to updating national laws, improving interagency coordination, boosting international IP cooperation, enhancing the IP expertise among judges and experts and raising public awareness of IP issues.

23. Government recommendations are currently being woven into the draft roadmap before its finalization. It is expected that the roadmap, covering the period up until 2024, will be approved by the end of 2022.

III. RAISING PUBLIC AWARENESS OF IP ISSUES

24. KazPatent considers that its mission is to continually improve its IP protection services and keep the general public abreast of the latest IP issues, including with regard to IPR protection.

25. Following visits by a delegation of the Kazakh Ministry of Justice to the United States National Intellectual Property Rights Coordination Center, KazPatent established the Office of Research and Analysis, which became the IPR Center in 2020.

26. The IPR Center conducts analytical studies (10 such studies have been completed to date) and works closely with government agencies, non-governmental organizations and representatives of the creative industries and the scientific and business communities in order to improve the protection and enforcement of IPRs and to provide up-to-date IP-related information.

27. The IPR Center, along with other departments of KazPatent and relevant government agencies, holds regular training activities (such as seminars, webinars and master classes) for the general public to enhance their legal understanding of IP.

28. Between 2021 and April 2022, it held more than 50 such activities for universities, schools, research bodies, business people and industry groups across the country. Since 2022, such activities have become a weekly affair. While in 2021 the bulk of participants came from small and medium-sized enterprises, in 2022, the focus has shifted to young creators and entrepreneurs.

29. Since 2021, the Center has been working closely with creators (IT specialists, musicians, directors, bloggers, artists, photographers and so on).

30. The Center has also set up channels on its social networks, such as IP Live Talks (chats with leading cultural and business figures on topical IP issues)¹² and KazPatent IP Digest (a weekly IP news round-up)¹³.
31. The Center ran its *IP Around Me campaign*¹⁴ to show how IP affects daily life and to convey the importance of protecting and enforcing IPR.
32. Well-known public figures in Kazakhstan are being asked to help raise public awareness of IP issues. More than 50 designers, directors, musicians, producers, actors, bloggers, business people and others have participated to date.
33. In order to broaden public awareness of IP and KazPatent's work, a special promotional video was aired on the popular business web show *Salem, men Nurlan Koyanbayev* (Hi, It's Me, Nurlan Koyanbayev) on YouTube¹⁵.
34. Since 2016, KazPatent has held an online contest for schoolchildren for the best essay on the theme *The Future Is in Your Hands: Invent and Create*. Essays may be submitted in Kazakh, Russian or English. Between 2016 and 2021, more than 20 winners were awarded valuable prizes.
35. In 2020, the Young Inventors School was launched to promote knowledge of IP and spark the interest of young people in Kazakhstan in the world of inventions. During this informal get-together, schoolchildren meet KazPatent experts to learn about current key IP issues. The event has so far been held in February 2020, December 2021, April 2022 (as part of the World IP Day celebrations) and May 2022 (as part of the nationwide anti-counterfeiting initiative). More than 600 schoolchildren have taken part in these events, and more are planned.
36. In 2021, a service-level agreement for technology and innovation support centers (TISCs) was signed with the World Intellectual Property Organization (WIPO). To date, agreements have been signed with six major universities to set up the TISC network.
37. Articles on topical IP issues are regularly placed with various media outlets, enabling KazPatent to reach a large and diverse audience.
38. Implementation of the above-mentioned projects has entailed no financial burden. Rather, they have been successfully carried out in cooperation with government and private stakeholders. KazPatent's projects and activities aimed at increasing the general public's legal literacy and promoting a culture of respect for IP are informative and convey a positive message on the effective protection and enforcement of IPRs.

¹² For more information, see <https://www.instagram.com/tv/COhdAPSJ1hO/?igshid=YmMyMTA2M2Y=>;
<https://www.instagram.com/p/CO3B2dwBI6P/?igshid=YmMyMTA2M2Y=>;
<https://www.instagram.com/tv/CPrusXmJoXf/?igshid=YmMyMTA2M2Y=>;
<https://www.instagram.com/tv/CROACejJ0Yc/?igshid=YmMyMTA2M2Y=>; <https://www.instagram.com/tv/CVfVDE-AjVX/?igshid=YmMyMTA2M2Y=>.

¹³ For more information, see <https://drive.google.com/drive/folders/1gGRWYLK-ockhQSXlw4nlo6tdqQVgaFqW?usp=sharing>;
https://www.instagram.com/s/aGlnaGxpZ2h0OjE3OTM4MDQ0MzUyNTc1NTY1?story_media_id=2606062551482893356&igshid=NDBIY2NjN2I=.

¹⁴ For more information, see <https://www.instagram.com/reel/CXX0BBQI1Em/?igshid=YmMyMTA2M2Y=>;
<https://www.kazpatent.kz/ru/news/sostoyalsya-vebinar-dlya-pps-i-studentov-kazahskoy-nacionalnoy-konservatorii-imeni-kurmangazy>; <https://www.kazpatent.kz/ru/news/kazpatent-provel-vebinar-na-temu-intellektualnaya-sobstvennost-kak-osnova-razvitiya-industriy>; <https://www.kazpatent.kz/ru/news/sostoyalsya-vebinar-dlya-pps-i-studentov-zapadno-kazahstanskogo-medicinskogo-universiteta-imeni>; <https://www.kazpatent.kz/ru/news/vebinar-na-temu-intellektualnaya-sobstvennost-kak-osnova-razvitiya-industriy-rk>; <https://www.kazpatent.kz/ru/news/kazpatent-sovmestno-s-centrom-predprinimatelstva-qolday-provel-obuchayushchiy-vebinar>.

¹⁵ <https://youtu.be/06CCDBuNkEw>.

39. By following international best practice and through its own experience, Kazakhstan is working to develop an effective, comprehensive approach to the issue of combating IPR infringements and raising public awareness thereof.

[End of contribution]

A MAJOR INVESTIGATION CASE OF THE NEWLY-CREATED TECHNOLOGY AND DESIGN POLICE DIVISION OF THE KOREAN INTELLECTUAL PROPERTY OFFICE

*Contribution prepared by Mr. Namkyu Kim, Investigator and Deputy Director, Technology and Design Police Division, Korean Intellectual Property Office (KIPO), Daejeon, Republic of Korea**

ABSTRACT

The Special Judicial Police (SJP) is designed to increase the efficiency of criminal investigations by granting administrative officials from various government departments the same authority as the police. The role of the SJP is to carry out investigative and enforcement activities that would either require specific expertise or pose challenges for regular police authorities given temporal and spatial limitations. The Korean Intellectual Property Office (KIPO), the Republic of Korea's government agency for industrial property, established an SJP force under the Industrial Property Investigation Division in 2010 to investigate trademark infringements, particularly those involving counterfeit goods. In 2019, the SJP was granted additional investigative authority over crimes involving a broader range of industrial property rights, such as patents, trade secrets and designs.

To enhance enforcement according to each specific field, KIPO undertook the task to expand and restructure the SJP in 2021. KIPO's SJP was segmented to help focus investigations resulting in the creation of a separate the Technology and Design Police Division (Tech Police) to investigate infringements of technology-related patents, trade secrets and designs. The Tech Police contributes to strengthening the protection and enforcement of industrial property rights as a dedicated unit with personnel specializing in intellectual property law and technology. This contribution explains the formation of the Tech Police and presents one of its notable investigative cases.

I. OVERVIEW OF THE KOREAN INTELLECTUAL PROPERTY OFFICE'S TECH POLICE

A. HISTORY

1. The Korean Intellectual Property Office (KIPO) first launched its Special Judicial Police (SJP) in 2010 within the Industrial Property Investigation Division to strengthen the response to criminal activities involving trademark infringements and unfair competition, particularly the manufacture, distribution and sale of counterfeit goods. At the time, the authority of the SJP was limited to trademark infringements and the unauthorized use of widely known names, trade names, trademarks, etc. However, illegal activities infringing patents and trade secrets became more sophisticated and complex. Accordingly, there was a call for KIPO personnel to employ their technological and legal expertise to carry out concentrated investigations and to address this growing societal issue.

2. In 2019, the Act on the Persons Performing the Duties of Judicial Police and Scope of Duties¹ was amended to expand the authority of KIPO to cover crimes infringing a wider range of industrial property rights (IPRs). Thereafter, the SJP commenced additional enforcement

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

¹ Act on the Persons Performing the Duties of Judicial Police and Scope of Duties, available at: https://elaw.klri.re.kr/kor_service/lawView.do?hseq=56347&lang=ENG.

activities for patents (Patent Act), trade secrets (Trade Secret Protection Act) and designs (Design Protection Act).

Table 1: Scope of the Authority of the SJP Before and After the Amendment

	Scope of Illegal Activity	Applicable Law
Before Amendment	Infringement of trademark rights or exclusive licenses	Trademark Act
	Unauthorized use of widely known names, trade names, trademarks, etc.	Unfair Competition Prevention and Trade Secret Protection Act
After Amendment (Addition)	Infringement of patent rights or exclusive licenses	Patent Act
	Infringement of design rights or exclusive licenses	Design Protection Act
	Unauthorized acquisition, use and disclosure of trade secrets	Unfair Competition Prevention and Trade Secret Protection Act
	Imitation/copy of another person's product	Unfair Competition Prevention and Trade Secret Protection Act

3. KIPO recognized the need to improve its response to industrial property right infringements related to technology by increasing its expertise and overcoming its inefficiencies, which arose from a single division performing multiple roles. Consequently, in 2021, the Industrial Property Investigation Division was restructured and increased in personnel to allow the trademark police unit to become the Trademark Police Division and separately create the Technology and Design Police Division (Tech Police), as a unit to strengthen enforcement activities related to the infringement of patented technologies and designs, and the unauthorized disclosure of trade secrets.

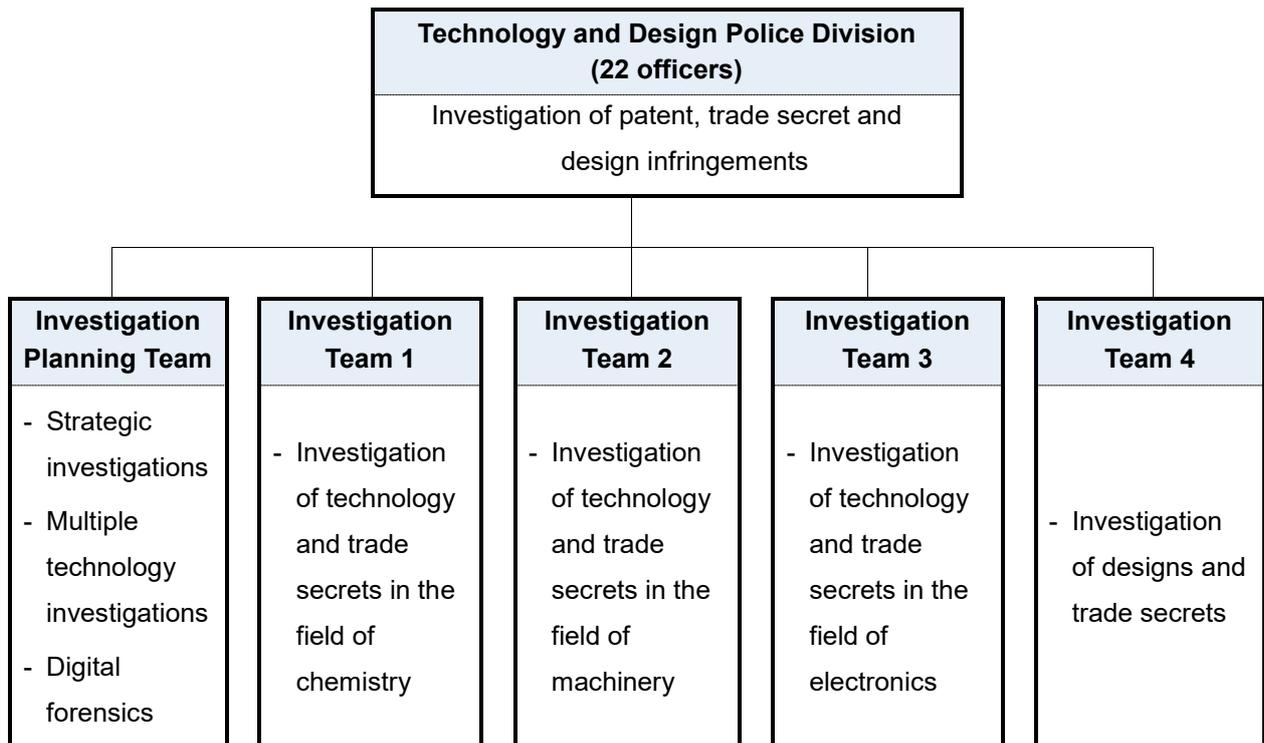
Figure 1: Timeline of the Tech Police



B. CURRENT STATUS

4. The Tech Police has nationwide jurisdiction and is based at KIPO headquarters in Daejeon. In total, there are five teams under the Tech Police, which are divided according to key technological fields. All members are professionals with a proficient knowledge of technology and IP law as well as experience in IP examination and trials. Many of the personnel who conduct investigations are qualified lawyers or patent attorneys, or have a Ph.D.

Figure 2: Organizational chart of the Tech Police



5. Patent and design infringements, as well as unauthorized disclosures of trade secrets, can be reported directly to the Tech Police either by mail, phone call, formal visit to the office or even online through a website. Upon receiving a complaint, KIPO begins an investigation by assigning the case to an investigator specialized in the relevant technological field. The investigator determines the existence of an industrial property right infringement based on the information gathered from the investigation. If a crime has been committed, the case will be delivered to the Public Prosecutor’s Office for prosecution.

Figure 3: The Tech Police Investigation Process



6. KIPO's SJP have been helping victims of technology infringements. The Tech Police plays an instrumental role by determining whether any industrial property rights have been infringed; regular police officers without the appropriate expertise and experience have difficulties in making such determination. Since having been granted broader investigative authority in 2019, the SJP has arrested 948 individuals for prosecution in the course of the investigation of 489 cases related to patents, trade secrets and designs.

Table 2: Number of Individuals Delivered to the Prosecution by the SJP

	2019 (Apr to Dec)	2020	2021	Total
Patent	95	170	169	434
Trade Secret	20	39	85	144
Design	73	82	71	226
Others	12	82	50	144
Total	200	373	375	948

7. Henceforth, KIPO plans to gradually expand the activities of the SJP and its personnel in order to strengthen the cooperation system that relies on the technological and legal expertise of KIPO and on the investigative expertise of the police and prosecutors.

II. INVESTIGATION OF AN UNAUTHORIZED DISCLOSURE OF CUTTING-EDGE TECHNOLOGY

A. CASE OVERVIEW

8. The Tech Police investigated a case involving the unauthorized disclosure of technology related to overhead hoist transport (OHT) systems², which was protected as the trade secret of a medium-sized Korean company "Company V" (victim). OHT systems are especially valuable as they are cutting-edge devices used in the production of semiconductors and displays. The incident involved collusion between the Director and the CEO of "Company A", a factory installation service company, and the CEO of "Company B", a trade brokerage company, for the purpose of exporting stolen technology abroad. The OHT blueprints and other information related to the technologies were disclosed with the aid of the CEO of "Company C" which had been subcontracted by "Company V".

9. In the end, seven individuals were prosecuted for unauthorized disclosure of trade secrets overseas, including the employees of "Company A" and the CEO of "Company B". They were found to have manufactured and exported a prototype OHT device based on illegally obtained information and data.

² An OHT system is an automated transfer system, mainly used in semiconductors and in display production involving multiple processes for transferring small objects at high precision.

B. DEVELOPMENT OF THE TECH POLICE INVESTIGATION

10. Upon receiving a complaint by “Company V”, the owner of the OHT technology, the Tech Police started its investigation in January 2020. Then, a search-and-seizure operation was carried out at “Company A” in May 2020, where substantial evidence was collected of the unauthorized disclosure and use of OHT trade secrets. Further analysis of the evidence revealed that the CEO of “Company C” and an employee of “Company V” were stealing important documents. The results of the Tech Police’s investigation were delivered to the Public Prosecutor’s Office, which gathered additional evidence and prosecuted the perpetrators.

C. SIGNIFICANCE

11. Since initiating investigations of technological infringements in April 2019, this was the first case transferred to the Public Prosecutor’s Office involving industrial technology and trade secret disclosure following a determination of industrial property right infringement by the SJP. Crimes involving intangible technologies are hard to expose, particularly patent infringement and the unauthorized disclosure of trade secrets. Even if they are uncovered, it is often hard to assess technological issues in order to convict properly. The Tech Police has the necessary technical and legal knowledge, as well as the capabilities and experience, to investigate industrial property right infringements and prove the commission of a crime. In this particular case, KIPO’s investigation was able to avert an economic loss of about KRW 100 billion (approximately USD 77.79 million) by preventing the OHT technology from being disclosed and transferred abroad.

[End of contribution]

THE ROLE OF THE PROSECUTION IN ENFORCING INTELLECTUAL PROPERTY RIGHTS IN THE REPUBLIC OF KOREA

Contribution prepared by Mr. Minwoo Seo, Prosecutor, Intellectual Property Crime Investigation Division, Daejeon District Prosecutors' Office, Daejeon, Republic of Korea

ABSTRACT

Intellectual property (IP) awareness has dramatically improved in the Republic of Korea through the late twentieth and early twenty-first centuries. Government policies were redirected to emphasize the significance of IP, relevant laws were revised in accordance with international treaties, and campaigns were launched to change public attitudes and behavior.

The Korean Supreme Prosecutors' Office (KSPO) has made a serious effort to strengthen law enforcement in respect of IP protection. First, it expanded the scope of IP crime to include the intentional infringement of patents and trade secret misappropriation. The Daejeon District Prosecutors' Office (DDPO) has the competence to handle such crimes. In addition, it has spared no effort to enhance the expert knowledge and skills of prosecutors and investigators. Last but not the least, since criminal penalties are not always the best solution, Korean prosecutors have sought alternatives such as the use of educational programs for offenders and the dismissal of minor cases.

I. TRANSFORMATION OF APPROACHES TO IP CRIMES

1. Through Korean intellectual property (IP) laws such as the Patent Act and the Trademark Act, criminal penalties as well as civil liability are applied to cases involving IP infringement¹. Such provisions are aimed to strengthen the rights of IP holders so that they can file complaints to public agencies including district prosecutors' offices and police stations so that investigation against alleged offenders can be launched; such investigation could ultimately lead to criminal search, seizure, arrest and detention. In the past, IP holders did not make it a priority to take criminal action against IP offenders because public agencies tended not to actively pursue criminal investigation, considering IP cases civil in nature.

2. A large number of criminal cases are concentrated on the manufacturers and sellers of fake products and pirated copies. When it comes to patent cases, prosecutors refrained from bringing criminal actions, if the case was complicated, until the related civil litigation in the IP courts was finalized; in some cases, the statute of limitations expired before the civil case was closed. There is a general perception that criminal proceedings are swifter than civil proceedings in Korea, but that is not the case for IP cases. However, as public awareness of the benefits of IP protection for technology development and the national interest and public good grew, Korean prosecutors began to respond more actively to IP crimes. The first change

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

¹ See the relevant provisions excerpted as follows: Patent Act Article 225 (Infringement): "(1) Any person who infringes a patent or an exclusive license shall be punished by imprisonment with labor for not more than seven years or by a fine not exceeding 100 million won" (available at: <https://wipolex.wipo.int/en/legislation/details/20928>); Trademark Act Article 230 (Crime of Infringement): "Any person who infringes trademark rights or an exclusive license shall be punished by imprisonment with labor for not more than seven years or by a fine not exceeding 100 million won" (available at <https://wipolex.wipo.int/en/legislation/details/20896>).

occurred in 2015 when the Korean Supreme Prosecutors' Office (KSPO) designated the Daejeon District Prosecutors' Office (DDPO) as the competent to handle IP crimes. A specialized division was established within the DDPO in 2018 to investigate and prosecute IP crimes, for which I am currently working.

II. DEVELOPMENT OF MEASURES TO FIGHT AGAINST IP CRIMES

A. CAPACITY BUILDING IN THE PROSECUTION SERVICE

3. In order to further develop specialized personnel, the KSPO hired three widely experienced patent lawyers in 2016 and transferred them to the Seoul Central District Prosecutors' Office, the largest of its kind in Korea as advisers to prosecutors. To that end, the Korean Intellectual Property Office (KIPO) used to dispatch four of its senior officers to the DDPO to advise prosecutors on IP cases and has dispatched six senior officers every year since 2020.

4. With regard to institutional aspects, the KSPO changed its policy in 2016. Now, prosecutors can independently decide whether or not a case should be brought to the criminal courts even before related civil lawsuits in the IP courts are concluded. Moreover, in 2019 it launched a new system enabling complicated IP cases to be transferred and dealt with by the specialized division in the DDPO, irrespective of territorial jurisdiction. Prosecutors across the country are now able to transfer complicated IP cases with the consent of defendants and victims. Prosecutors in the DDPO then conduct further investigation with specialized investigators and IP investigation consultants to make an ultimate decision whether or not to prosecute.

B. COOPERATION WITH OTHER ORGANIZATIONS

5. Prosecutors in the DDPO have the authority to supervise all stages of investigation activities of KIPO's specialized IP police officers. Without prosecutors' approval, they are not allowed to request any warrant from the court. In recent years, KIPO has considerably improved the organization and staffing of specialized IP police officers. The number of cases that they have initiated has also rapidly risen.

6. In order to keep pace with KIPO, prosecutors in the DDPO have been developing closer cooperative relations with KIPO and other relevant agencies such as the National Intelligence Service, the Fair Trade Commission and the Ministry of Small and Medium-sized Enterprises (SMEs) and Startups by holding regular meetings on combating IP crimes since 2021. Building relations in these meetings have contributed to improving cooperation in individual criminal cases.

7. Korean prosecutors also have the authority to initiate their own investigation into serious crimes including technology crimes and trade secret infringement. Since the Republic of Korea is one of the most developed countries for high-tech industries such as the semiconductor, secondary battery, and defense industries, prosecutors in DDPO's Intellectual Property Crime Investigation Division concentrate their time and efforts on such crimes in collaboration with the aforementioned relevant agencies. In 2020, the Division arrested and prosecuted a renowned professor for the unauthorized disclosure of secret technological information on an automotive vehicle sensor abroad, based on intelligence gathered by relevant agencies. He was found guilty at the district court in 2021. Furthermore, the Division has successfully managed many other high-profile cases related to technology and trade secret infringement.

III. USE OF ALTERNATIVE MEASURES

8. Taking into account that criminal prosecution and sentencing is not the most effective way to protect the rights of IP holders, the KSPO has developed various kinds of alternative plans and policies in consideration of the balance between justice, fairness and deterrence.

A. IMPLEMENTATION OF CRIMINAL MEDIATION

9. When criminal mediation was introduced in 2006, it was mostly used for conventional victim-offender mediation such as in cases of battery, theft or fraud. It was soon applied to IP cases as victims (usually the IP holders) sought compensation for injury incurred.

10. However, there was an issue to consider before expanding criminal mediation in IP crime cases. Criminal mediation in IP Crime cases was effective mostly when the infringement was obvious. Most mediators lacked background knowledge of IP or technology, and their limited understanding of the facts led to unsatisfying results, especially when the infringement is not obvious.

11. To address this issue, the KSPO decided to cooperate with other entities with experience in IP mediations. KIPO started to use mediation for civil litigation with the establishment of the Industrial Property Rights Dispute Mediation Committee (IPRDMC) in 1995 even though the Committee only handled five civil cases per year on average until 2013. In 2015, the KSPO started to send ongoing criminal patent, trademark, industrial design, and trade secret cases to IPRDMC, with the consent of both parties.

12. The KSPO has expanded the use of mediation to include copyright infringement cases on a trial basis. Since 2021, the Seoul Central District Prosecutors' Office and DDPO have sent criminal copyright infringement cases to the Korea Copyright Commission (KCC), seeking to resolve them with the consent of both parties.

13. The IPRDMC or KCC's mediators, who are experts in IP or technology, hold a meeting with victims and offenders to reach an agreement. We found that the involvement of experts in the mediation process can increase the chance to make more than satisfactory results.

14. Crimes that can be prosecuted only with victim's complaints such as patent or copyright cases, for example, are closed immediately when agreements are made. In case of crimes that can be prosecuted without complaints, trademark cases, for example, prosecutors can close the case or suspend the prosecution depending on the progress of the investigation.

B. CONDITIONAL SUSPENSION OF PROSECUTION

15. Many defendants in copyright infringement cases are first-time offenders including minors and do not have the opportunity to learn about IP protection such as copyright. It seems inappropriate to impose a fine or imprisonment. Instead, education to raise awareness on copyright infringement prevention can be a better option.

16. From this point of view, the KSPO took a step back from prosecution. In 2009, it ordered district prosecutors' offices to dismiss cases involving minors who had accidentally infringed copyright online by downloading and distributing copyrighted content without the appropriate permission. This issue arose when several copyright holders indiscriminately filed massive criminal complaints against unidentified Internet users, regarded as an abuse of their right to judicial procedure.

17. At the same time, the KSPO sought to suspend the prosecution of first-time offenders for copyright infringement and remove infringed materials from online portals. Nonetheless, first-time offenders are required to take a one-day awareness course on copyright protection, currently provided by the Korean Copyright Protection Agency. Prosecutors suspend charges on the condition that the offender completes the course. In case the offender fails to do so, prosecutors reopen the case and bring it before the court.

IV. TRAINING AND NETWORKING TO ENHANCE EXPERTISE

18. The Ministry of Justice and the KSPO have implemented a number of training and networking programs in order to respond to the growing demand for the appropriate investigation of IP crimes. The Institute of Justice (IOJ), which is affiliated to the Ministry of Justice, reformed its annual training program to make it more demand-oriented and tailored to actual practices. Junior prosecutors can choose IP crime investigation as one of their professional fields and take the program at the Institute. Lecturers for each class are judges, prosecutors and patent lawyers with wide experience in IP cases and a superior knowledge in the Criminal Code.

19. The DDPO also plays a significant role in IP training for prosecutors. Under the memorandum of understanding signed with KIPO, the DDPO launched a biannual three-day intensive program supported by KIPO's International Intellectual Property Training Institute. The program provides knowledge and skills relating to criminal and prosecutorial procedures by teaching general theories combined with relevant cases, and supplemented by patent, trademark and copyright laws. In this regard, the programs offered by the IOJ and the DDPO can be considered complementary to each other.

20. For networking purposes, the KSPO and the IOJ established a professional prosecutors' community of support groups in 47 different fields. Each group consists of dozens to hundreds of prosecutors and is run by volunteers who are interested or have experience in various fields. In 2019, members of the community from the DDPO, with support from the IOJ and the KSPO, held a seminar entitled *Contemporary Issues in U.S. Intellectual Property Law*, at the Office, in which Professor James Gibson from Richmond Law School in Virginia, United States of America, participated. In 2021, prosecutors participated in the European Intellectual Property Prosecutors Network (EIPPN) online workshop. The DDPO greatly values international networking opportunities of this kind and plans with enthusiasm to engage in further international exchanges in the future.

V. CONCLUSION

21. The DDPO's Intellectual Property Crime Investigation Division aims to become a role model of specialization for prosecutors and investigators in the KSPO. Korean prosecutors have made an all-out effort to date in order to achieve fairness, equality and justice in the field of IP. The Division will continue to work relentlessly to effectively respond to imminent challenges and protect the rights of IP holders.

[End of contribution]

THE INTELLECTUAL PROPERTY RESPECT OFFICER PROGRAM IN SAUDI ARABIA

*Contribution prepared by Mr. Yasser Al-Debassi, Executive Director, IP Respect, Saudi Authority for Intellectual Property (SAIP), Riyadh, Saudi Arabia**

ABSTRACT

This paper relates the experience of Saudi Arabia regarding the Intellectual Property (IP) Respect Officer Program, an awareness-raising initiative developed by the Saudi Authority for Intellectual Property (SAIP) with a view to spreading awareness of and promoting respect for IP. At first, the initiative covers the government sector, but it will later also address the private sector. The initiative seeks to raise awareness, increase compliance and build respect for IP rights in government bodies and commercial enterprises by training and qualifying a representative from each participating body. The IP Respect Officer Program consists of two main phases: the qualifying phase, conducted jointly by the SAIP and the WIPO Academy, and the target achievement phase. At the time of preparing this paper, a total of 76 government bodies had signed up for the program and work was underway on extending coverage to all government bodies. In the next stage, the focus of the program will be on the private sector, particularly by providing support in order to raise awareness, increase compliance and protect intangible assets.

I. INTRODUCING THE IP RESPECT OFFICER PROGRAM

1. The Intellectual Property (IP) Respect Officer Program is an initiative of the Saudi Authority for Intellectual Property (SAIP), designed in a participatory model and based on developing staff's absorptive capacity, in coordination with the bodies concerned. The initiative seeks to promote respect for IP rights and increase compliance with the laws and regulations pertaining to IP in the public sector. It further seeks to protect intangible assets by training and qualifying a member of staff from each government body as a compliance officer.

II. SCOPE OF THE IP RESPECT OFFICER PROGRAM

2. The first phase of the program focused on the public sector, with a total of 76 government bodies signing up for the program.
3. The second phase will focus on the remaining government agencies in the Kingdom of Saudi Arabia, as well as sports clubs. The aim is to conclude this phase by the end of 2022.
4. The third phase, scheduled to commence in 2023-2024, will focus on the private sector.

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III. STRATEGIC GOAL

5. In addition to the goals laid out above, the SAIP endeavours to achieve a key strategic goal through the IP Respect Officer Program, namely, the promotion of respect for IP rights.

IV. DUTIES OF THE IP RESPECT OFFICER

6. The duties of IP Respect Officers are determined on the basis of analyses of the current situation and identification of areas for development. As such, the following duties have been identified:

- ensure that the body represented by the IP Respect Officer is compliant with IP laws regulations;
- work in cooperation with the SAIP to formulate IP policies for the body;
- monitor the latest developments in IP and raise staff awareness of IP;
- act as the body's IP consultant and as liaison officer between that body and the SAIP;
- write IP reports and information requests for the body; and
- any other duties that the SAIP sees fit, subject to the agreement of the government body.

V. MODUS OPERANDI

7. A systematic plan has been prepared that covers the entire process, beginning with questionnaires designed to measure the current situation in government bodies, which, in turn, help gauge compliance with IP-related laws and regulations.

8. The results of compliance testing help IP Respect Officers during consultancy sessions to determine IP goals, with a view to raising levels of compliance and setting out timeframes for completion.

VI. COMPONENTS OF THE IP RESPECT OFFICER PROGRAM

A. QUALIFICATION

9. In cooperation with the SAIP and the WIPO Academy, IP policy training courses are held. Thereafter, IP Respect Officers are accredited and channels of communication are opened between officers and the SAIP. If needed, support can be provided.

10. This component includes four main stages:

- stage 1: introduction of the IP Respect Officer Program, explaining the officers' duties and clarifying the road map;
- stage 2: provision of SAIP and WIPO Academy training workshops on IP enforcement;
- stage 3: provision of the WIPO Academy general distance-learning course on IP (DL 101), in cooperation with the SAIP; and

- stage 4: provision of training courses in several areas, including contract-based uses of IP and IP policy development.

B. TARGET ACHIEVEMENTS

11. A number of workshops designed to raise IP awareness have been implemented and IP policies adopted by government bodies. In addition, periodic IP reports have been published and shared. Four subsidiary components have been adopted:

a) Raising Awareness of Intellectual Property

12. Packages of awareness-raising materials have been prepared and are sent by e-mail to IP Respect Officers on a regular basis. Officers forward these materials to the staff of the appropriate government body, in coordination with the internal communication office. The process is followed up and monitored by the IP Respect Officer. This component has three stages:

- Stage 1: measuring the baseline. The baseline is measured by means of a short test sent to IP Respect Officers, who, in turn, share the test with the government bodies they represent, for internal distribution to staff.
- Stage 2: awareness-raising package. A package of awareness-raising material is sent to each government body, in coordination with the IP Respect Officer. In addition, government bodies are offered training workshops.
- Stage 3: measuring the level of improvement. The level of improvement is measured once the IP Respect Officer has been qualified, awareness-raising packages have been distributed internally and workshops to raise the level of awareness of IP rights have been held. A short test is sent to the IP Respect Officers, who, in turn, share it with the staff of the government bodies.

b) Establishing Intellectual Property Policies

13. IP policies for government bodies have been formulated in coordination and cooperation with the IP Respect Officers. This component has two stages:

- Stage 1: measuring the baseline. The baseline is measured by means of a questionnaire sent to IP Respect Officers to identify bodies that have failed to adopt IP policies with a view to helping them formulate and adopt such policies.
- Stage 2: helping bodies to adopt IP policies. Assistance is provided to government bodies that have not adopted IP policies by providing them with the know-how to develop such policies.

c) Highlighting the Use of IP Rights

14. Action is taken to raise awareness of the uses of IP by government bodies, including the institutional liaison and public relations departments. To this end, specialized training courses are offered. This component has two stages:

- Stage 1: data collection. The activities undertaken and programs used by government bodies are identified with a view to ensuring delivery of appropriate courses to help guarantee the level of commitment to building respect for IP.
- Stage 2: qualification. Training workshops are offered to IP Respect Officers, in addition to target groups from IT departments, institutional liaison department and public relations department

d) IP Protection

15. After qualification, the IP Respect Officer shall be responsible for the following, with the support of SAIP:

- ensuring compliance of the government body with IP laws and regulations;
- safeguarding intangible assets, such as copyright, trademarks, research, patents, designs etc. from infringement;
- ensuring that contracts with external bodies include clauses relating to IP;
- assisting the staff of government bodies by providing essential advice through IP clinics; and
- achieving all the set goals of the IP Respect officer program.

VII. TOOLS TO BE USED IN CARRYING OUT THE JOB

16. IP Respect Officers use e-mail, the recognized means of communication, to coordinate with one another. They also hold regular meetings to monitor progress and visit government bodies to conduct inspections.

VIII. ACHIEVEMENTS

17. Some 76 IP Respect Officers in government bodies have been trained and qualified. They are responsible for formulating IP policies, raising levels of awareness in their respective bodies and responding to IP-related queries in cooperation with the SAIP.

18. More than 31 IP policies have been formulated for government bodies in cooperation with qualified IP respect officers.

19. Awareness-raising material have been distributed to more than 45 government bodies.

20. Work is underway on measuring the level of IP awareness in the 76 participating government bodies.

21. Several awareness-raising workshops have been held in government bodies in coordination with IP Respect Officers.

IX. FUTURE PLANS

22. Looking ahead, the SAIP plans to increase the number of government bodies in the current second phase of the program and accredit an additional 100 officers.

23. Moreover, the program will be extended to cover the private sector in the third phase, seeking to increase knowledge of and commitment to IP rights.

X. INITIATIVES IN SUPPORT OF THE INTELLECTUAL PROPERTY RESPECT PROGRAM

24. The Permanent IP Enforcement Committee (Committee) consists of 13 high-level members from 13 government bodies belonging to the IP enforcement system. The Committee seeks to coordinate with these bodies to ensure prompt enforcement, work proactively to combat IP infringements in Saudi Arabia, coordinate awareness-raising campaigns and organize joint enforcement campaigns. The Committee provides support to the IP Respect Officer Program if the latter faces challenges that prevent it from achieving its goals. Furthermore, the Committee may execute initiatives targeting government bodies through the IP Respect Officer Program.

25. The IP Respect Council (the Council) is an initiative that seeks to link the public and private sectors within the enforcement system and present SAIP and public sector initiatives to the private sector for consideration. It also seeks to understand the challenges facing the public and private sectors in the area of IP enforcement, explore mechanisms for joint cooperation with the private sector and coordinate with other members of the system and support government bodies through the IP Respect Officer Program to raise awareness and enforce IP rights across the board. Furthermore, the outputs of the Council and results of its activity are implemented through the IP Respect Officer Program.

26. IP advisory clinics help to generate and use IP rights by providing IP advice, guidance and services to government bodies and innovation-based small and medium size enterprises. Questions and enquiries received from IP Respect Officers are forwarded to the IP clinics for their response and advice.

[End of contribution]

THE UNODC-WCO CONTAINER CONTROL PROGRAM'S WORK ON INTELLECTUAL PROPERTY RIGHTS

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ABSTRACT

The Container Control Program (CCP) of the United Nations Office on Drugs and Crime (UNODC) and the World Customs Organization (WCO) aims to build capacity in member states that want to improve risk management, supply chain security and trade in seaports, airports and land border crossings to prevent the cross-border movement of illicit goods. Since the program's inception in 2004, CCP units have seized almost 1,000 shipments related to intellectual property rights (IPR) violations. With more than 18 years of experience, the CCP has gained practical insights into the challenges related to the intricate nature of IPR violations. Lessons learned from these challenges include the importance of sensitizing governments to adapt their IPR legislation to allow IPR-infringing goods to be seized, raising awareness among governments in countries with transit ports about their crucial role in stopping IPR-related crime and engaging the private sector through training and direct cooperation with brand owners.

I. THE CONTAINER CONTROL PROGRAM OF THE UNITED NATIONS OFFICE ON DRUGS AND CRIME AND THE WORLD CUSTOMS ORGANIZATION

1. The Container Control Program (CCP) was established in 2004, as a joint initiative of the United Nations Office on Drugs and Crime (UNODC) and the World Customs Organization (WCO). The mission of the CCP is to build capacity in member states that want to improve risk management, supply chain security and trade in seaports, airports and land-border crossings to prevent the cross-border movement of illicit goods. While around 90 per cent of all trade is conducted via maritime containers, less than two per cent of shipping containers are ever screened for trade enforcement purposes. The CCP aims to assist governments in establishing and maintaining effective container controls that prevent the trafficking of illicit goods, while facilitating legitimate trade and protecting national revenues. To that end, the CCP establishes and maintains port control units (PCUs) at seaports, dry ports and land border crossings, and air cargo control units (ACCUs) at airports, comprised of customs, national police, anti-narcotics forces and other law enforcement agencies. Steps towards the establishment of such inter-agency units include a technical needs assessment, the signing of a memorandum of understanding, theoretical and practical training and the delivery of equipment. The CCP equips, trains and mentors law enforcement officers to improve the identification and inspection of high-risk freight containers, while ensuring minimal disruption to legitimate trade and business. To support legitimate trade and increase the security of maritime, land and air borders, the CCP encourages partnerships between all PCUs, ACCUs and the trade and business community. It promotes closer cooperation between national law enforcement agencies, while ensuring the development of effective information-sharing mechanisms between CCP-participating countries at regional and international level, as well as with the wider customs and law enforcement community.

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2. Eighteen years after its inception, the CCP now operates 129 units in 73 countries. These inter-agency units are equipped to exchange information with their counterparts in other countries using a secure communication application, developed by the WCO, called ContainerComm. This provides PCUs and ACCUs with access to a wealth of information, allowing users to share information about high-risk containers and verify their identification numbers.

3. The strategy of the CCP has resulted in the seizure of a wide range of prohibited goods. These include weapons and ammunition, the proceeds of environmental crime (e.g., fisheries, forest and wildlife crime), prohibited drugs, strategic goods, falsified or unlicensed medicines, precursors for drugs and explosives, cigarettes, alcohol, stolen vehicles and goods that are counterfeit or otherwise violate IPRs.

II. THE CONTAINER CONTROL PROGRAM'S WORK ON INTELLECTUAL PROPERTY RIGHTS

4. IPR violations are detrimental to legitimate business interests and national economies. The CCP is confronted with IPR violations and counterfeits on a daily basis. Violations include a wide variety of products, including clothing, cosmetics, cigarettes, toys and electronics. Since the programme's inception, CCP units have seized almost 1,000 shipments related to IPR violations.

5. The CCP cooperates closely with the WCO IPR section in Brussels, which gives CCP unit members the opportunity to participate in workshops as well as regional and international WCO operations. Moreover, the WCO has close relationships with IP owners and has signed a memorandum of understanding with the International Trademark Association. These connections are an important advantage for the CCP, as they provide CCP units with direct contacts and valuable information.

6. The enforcement of IPRs is a complex field at the nexus of legislation, law enforcement and business. With more than 18 years of experience in facilitating coordination and expert training required to identify and inspect high-risk freight containers, the CCP has gained practical insights into the challenges related to the intricate nature of IPR violations.

III. CHALLENGES AND LESSONS LEARNED

7. A key challenge that the CCP faces is a lack of *legislation* to target IPR violations in affected regions. One lesson learned is the need to sensitize governments to adapt their IPR legislation to allow containers to be stopped and IP-infringing goods to be seized.

8. An additional challenge is the lack of vested interests on the part of governments in countries with *transit ports*. This can be explained by the fact that most containers are merely passing through their ports and therefore do not generate revenue or otherwise have an impact on the economy. Raising awareness is key in this context. However, even if there is the willingness to carry out inspections, monitoring containers in a transit port is challenging. For example, if authorities do seize inspected goods, they do not necessarily have the space to store them. Furthermore, ports often do not have sufficient personnel to inspect containers and take cases to trial.

9. Another major challenge is posed by insufficient support from the *private sector*. For instance, when a container with IP-infringing goods is detained, the brand owner has to file a complaint with the national authorities to start a procedure. Yet, in many cases the brand owner does not show up to file a complaint, which means that authorities are stuck with a container of goods taking up valuable storage space. In the end, the authorities only lose.

10. A lesson learned is the importance of better engaging the private sector and creating awareness of its crucial role in this process. To this end, the CCP invites brand owners to several seminars and training sessions each year. Moreover, it works directly with brand owners who show interest in cooperating with the program.

11. In addition, the CCP has found that having a list of the main contact points for brand owners in each country is very useful to combatting IPR violations more effectively. In the case of a seized container, this information enables CCP unit officers to contact brand owners directly and have a conversation in real time. Otherwise, the CCP unit officers might not be sure whom to contact and the communication process may last for weeks.

12. Furthermore, brand owners would facilitate the work of CCP units by sharing intelligence, which might improve risk analysis when profiling containers.

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