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ISSUES RELATED TO THE ENFORCEMENT OF IP RIGHTS:
NATIONAL EFFORTS TO IMPROVE AWARENESS OF DECISION MAKERS
AND EDUCATION OF CONSUMERS
IN ANTIGUA AND BARBUDA AND THE CARIBBEAN*

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* The views and opinions expressed in this paper are those of the author and not necessarily those of the World Intellectual Property Organization (WIPO) or its Member States.

Introduction

Intellectual property has become a key ingredient in business strategies. New products, brands and creative designs are launched on the global market and these are the results of continuous human innovation and creativity. Small and medium size enterprises are often the driving forces behind such developments; however, like many of the creators of works in the Caribbean region, these enterprises are not able to exploit the opportunities available to them as they are not aware of the intellectual property system or the protection it can provide for their innovations, brands, and designs. Our musicians, artists, designers, writers, inventors, and creators in general are unable to reap all the rewards to be derived from their creations because of their inability to exploit their rights without adequate protection. They end up being frustrated by the prevalence of piracy of their works and as a result the level of creativity in our Countries decreases. Once our citizens are no longer creating, or our business men can no longer attract investors, or our manufacturers can no longer produce goods that are capable of competing in the global market, our economies will certainly suffer. Recently, a UWI Professor of law noted that, "The Jamaican music industry, the world's leading exporter of reggae music, is losing millions of dollars through intellectual property piracy and it is revenue that the Country can ill afford to lose as it continues to develop its economy." It is imperative that our creators and business enterprises be taught how to fully utilize their IP assets in their business activities. Adequate protection of a company's intellectual property is a crucial step in deterring potential infringement and in turning ideas into business assets with a real market. Modern legislation and effective administrative infrastructures for the acquisition of IP rights are important steps towards IP protection. But the acquisition of IP rights is of little economic value if these rights cannot be enforced effectively. The credibility of the IP system depends to a considerable extent on the enforceability of IP rights conferred thereby. Well-functioning IP enforcement mechanisms are the best means to limit the number of violations of IP rights and to ensure that right holders and the society as a whole can reap the benefits from the IP system.

This presentation highlights the efforts of Antigua and Barbuda in the enforcement of IP rights with special reference to the improvement of awareness of decision-makers and education of consumers. It also includes an overview of the recent anti-infringement activities that were implemented in Caribbean region in general, highlighting those activities were included in the anti-infringement programme that is currently being implemented in all Caribbean states that will be hosting matches and other related events during Cricket World Cup 2007.

Antigua and Barbuda's Intellectual Property Reform

The commencement of the reform of the intellectual property system in Antigua and Barbuda was marked by the signing of five (5) international treaties in 1999. Although Antigua and Barbuda signed on to the WTO's TRIPS Agreement in 1995 with the rest of member states from the Caribbean, nothing much was done in preparation for the December 31, 1999 deadline imposed by the Agreement, where all intellectual property systems should have been upgraded along international standards.

The Legislative Framework

In 2003, Antigua and Barbuda passed new legislation on trade marks, patents, industrial designs, integrated circuits, geographical indications, copyright, and an Act that created the Registrar of intellectual property and established the Intellectual Property Office. Implementing regulations for the respective Acts are currently being drafted. The regulations

to the Trade marks Act, the Industrial Designs Act, the Geographical Indications Act, and the Integrated Circuits (Topography) Act have been completed and are awaiting approval. In general, the legislation defines the rights of the right holder and provides both civil and criminal remedies for victims of infringement. The role of the Comptroller of Customs and the Police is spelt out in the Trade Marks Act and the Copyright Act with regards to the importation, manufacturing, sale, and distribution of infringing goods. The High Court of Justice has jurisdiction in all intellectual property matters. Appeals can be made to the Eastern Caribbean Court Appeal.

The National Authority

The Antigua and Barbuda Intellectual Property & Commerce Office (ABIPCO) was officially established in 2004 with the appointment of the Registrar of Intellectual Property and Commerce and eight administrative clerks. This office was housed in the High Court of Justice Building. In May of 2005, the new office site was dedicated, and in February 2006, ABIPCO commenced operations at the new location. The Government of Antigua and Barbuda commends the Director General and the World Intellectual Property Organization for facilitating this reform process by providing invaluable technical assistance upon request.

Local Enforcement Activities

In addition to legislative and technical reform, the Government of Antigua also embarked on a public awareness campaign geared towards the education of all stakeholders. Like all the Countries of the Caribbean, it was recognised that education at all levels is the key to a successful reformation of intellectual property regimes locally, regionally, and internationally. Our region's biggest resource is its people and we have to encourage them to invent or be creative by providing the ideal environment and incentives. New inventions and creations can also result in the creation of products that can be competitive in the global market. The fact that we have limited financial resources should not prevent us from enticing investors to our shores to develop and manufacture our product for us under specific contractual terms. The following is a chronological review of the enforcement activities that were held between 2000 and 2005, and were specifically geared towards enhancing the awareness of decision-makers and education of consumers.

2000 Workshop on the PCT procedures in Antigua and Barbuda hosted in conjunction with WIPO.

World Intellectual Property Day activities included media coverage (articles and interviews), an exhibition of local articles reflecting elements of intellectual property.

2002 Missions from WIPO:

- The first focused on the sensitization of the Prime Minister, members of Parliament and other Government Officials as to the importance of intellectual property to developing economies, and the need for an intellectual property policy to be incorporated in the national development plan. The WIPO Officials also met the Chief Justice of the Eastern Caribbean Supreme Court to discuss future collaborations between WIPO and the East Caribbean Supreme Court Judicial Institute. This institute is responsible for the creation and implementation of training programmes for Judges, Magistrates,

Registrars, and other judicial officers and administrative staff within the member states of the Organization of Eastern Caribbean States (OECS).

- The second mission took the form of a series of seminars that targeted the Judiciary, Attorneys, Customs and Police Officers, Lawyer Clerks, Creators/Musicians/Artists, the members of the Chamber of Commerce and the Small Industry and Manufacturing Association.

2003 A WIPO mission on the international registration of trade marks and Geographical Indications in the form of a consultation with Attorneys-at-law and other trademarks agents.

A WIPO fact-finding mission to assess the needs of Antigua and Barbuda in reference to its public awareness strategies was conducted.

A special informal meeting with the Director General of WIPO and musicians, artistes, and Attorneys-at-law, was held during the fifth WIPO Ministerial Level Meeting which was organized in Antigua and Barbuda. During the Ministerial meeting, the Cooperation Agreement between WIPO and the Caribbean Governments for the development of efficient intellectual property systems in the respective Countries was signed by Nine (9) Caribbean Governments. Subsequently, 2 other countries have signed the Agreement.

2004 The erection of an outreach booth at the National Schools' Science Fair

2005 Consultation with senior officers from IICA, the Ministry of Agriculture, Lands, Marine Resources and Agro Industries, the Ministry of Justice and the Registrar of Intellectual Property, and one of the region's Chief Negotiators at FTAA and WTO (RNM) on the importance of promoting and preserving national agricultural products through intellectual property protection.

A Workshop on enforcement for police and custom officials which was designed to provide them with practical, hands-on training.

A Seminar on Copyright for relevant stakeholders to understand their rights within the copyright framework.

2006 Issuance of pamphlets created by the staff of ABIPCO with information on trademarks registration and copyright.

Recent and future Regional Enforcement Activities

Activities targeting the Judiciary:

In 2001, an inaugural regional colloquium for the Judiciary within the OECS was held in St. Lucia under the auspices of the St. Lucian Government, the Eastern Caribbean Supreme Court, and WIPO. The facilitators were senior Judges and practitioners from the UK and the US. After several discussions between officials for WIPO, the World Wide Academy (WWA), and the Eastern Caribbean Supreme Court Judicial Institute, a Colloquium for Judges within the OECS will be held in Dominica in July 2006. The Judiciary in Trinidad and

Tobago, Jamaica, and Barbados have also benefited from similar colloquiums facilitated by WIPO as part of the Countries' national enforcement programme.

In 2004, the International Intellectual Property Institute (IPI) co-hosted a two-day symposium in Barbados on the future of the CCJ, entitled "Establishment of the Caribbean Court of Justice: The Effect on Intellectual Property and International Trade" to facilitate discussion about the jurisdictional authority of the Court over intellectual property disputes in the Caribbean. The discussion brought together Justices, policymakers, Ministry of Justice officials from the Caribbean Community and members of the international development community. Additionally, several judges have participated in training programmes offered by the USPTO.

Customs, Police, and Other Stakeholders;

The latter half of 2005 to the first half 2006 was characterised by an intensification of outreach and enforcement activities within the Caribbean region. It also witnessed an increase in WIPO's technical assistance, which had significantly decreased during 2004 as a result of the financial constraints faced by the Organization, a year after the adoption of the aforementioned Cooperation Agreement. Workshops on enforcement were also held in Barbados, Jamaica, and St. Vincent and the Grenadines, between September and November of 2005, all with the assistance of WIPO. These were geared towards all enforcement officials including the Police, Customs, Judicial Officers, and other stakeholders who will be affected by any infringement of intellectual property rights. In Barbados, a presentation on border measures was made by the IPO during the Customs and Excise Refresher Training Course in January 2006. There was also the recent appointment of the former Deputy Registrar to the Magistrate, bringing increased IP knowledge to the Barbados judiciary. The Belize Intellectual Property Office have conducted training sessions for its police and custom officials and provides advise as needed.

Educational seminars and workshops on intellectual property that targeted IP Office Officials, agents, other stakeholders were held during the same time period both at the national and the regional levels. This included a regional workshop on Trade mark Examination and Opposition Hearing for Caribbean Countries that was held in Jamaica, a regional workshop on Industrial Designs and Geographical Indications for Caribbean IP Offices that was held in St. Lucia, and more recently in April 2006, a regional outreach training program was hosted in Jamaica.

U.W.I. and other NGOs

Private organizations and NGOs throughout the region have collaborated with the Governments within the Caribbean region to stage educational and outreach activities. For example, as recent as March of 2006, the Caribbean Publishers Network (CAPNET) and WIPO in association with the University of the West Indies staged two regional training workshops on intellectual property specifically relating to the publishing industry. One was held in Trinidad and Tobago and the other was held in Jamaica. The University will also be co-sponsoring a program on trade and the environment with the United Nations Environmental Programme and the Commonwealth Secretariat, in which WIPO hopes to participate in bringing IP to ministries that traditionally do not link this area with their work. The University of the West Indies have always played a pivotal role in the education of law students in the field of intellectual property. Although the curriculum reflects a limited intellectual property content, it serves to enhance the knowledge of the students, who in most cases have had little or no exposure to intellectual property issues.

Other enforcement mechanisms

On April 26 2006, the Ministry of Legal Affairs in Trinidad and Tobago in conjunction with the Intellectual Property Office erected information booths with a poster display of information on intellectual property at strategic points throughout the twin island state. Creative pamphlets were made available to the general public.

In Belize, the IP Office published two training manuals on enforcement of copyright and related rights and industrial property.

Documentaries either reflecting the work of local IP Offices, or educating the viewers on the issue of piracy were launched in Countries like Jamaica, Suriname, Trinidad and Tobago as part of the national enforcement campaign.

Infringement units were created within the Police Forces of Barbados, Jamaica and Trinidad and Tobago to crack down on infringers and eradicate the manufacturing, distribution, and sale of infringing goods and materials.

The Results*Police & Custom Action*

The Police Infringement units in Barbados, Jamaica, Trinidad and Tobago, have been very active in its anti-piracy campaign. Police raids on infringers have been reported in these territories where equipment used to create the infringing good and the infringing goods were confiscated and/or destroyed, and persons are prosecuted with the help of the local Collective Management Societies (See chart below). For instance in Barbados, a public destruction of illicit recordings was conducted in April 2006. In Trinidad and Tobago and Jamaica the Infringement units are in the process of tackling the problem of DVD piracy, which is on the increase throughout the Caribbean region. The units are seeking the assistance of the Caribbean Film Services Limited, which is the authorized distributor of DVDs in several Caribbean Countries. The support and assistance of international rights holders are also sought, sometimes with little success.

Seizures	2004	2005	2006 <i>to 12/05/2006</i>
CDs	5, 882	58	77
DVDs	605	8,072	10
VHS	4	8,482	0
PCs	<i>NI</i>	3	2
DVD players	<i>NI</i>	3	-
CD burners	<i>NI</i>	1	-
Arrests¹	3	6	8

NI – No information available

Source: Copyright Infringement Unit, Royal Barbados Police Force

¹ Figure limited to arrests made by the Copyright Infringement Unit, as distinct from other copyright related arrests made by police officers generally.

With the aid of international rights holders, the Belize Custom Department has seized approximately US\$300,000 worth of clothing carrying counterfeit labels, as well as approximately US\$1,400,000 worth of counterfeit cigarettes. The clothing was later donated to charity after the removal of the offending labels and the cigarettes were destroyed.

Cases

In general, cases involving trademark infringement or appeals originating from Opposition hearings tended to be the regular cases dealt with by the Supreme Courts within the Caribbean region. However, within the last two years, it is apparent that there is an increase in cases involving copyright infringement in several Caribbean Countries.

In Antigua and Barbuda, applications for injunctions were filed in High Court of Justice after the 2005 Carnival Celebrations. The cases involved the unauthorised sale of music CDs that were illegally manufactured. The remedies sought were granted.

Another example was found in Jamaica, where that Country's first civil action in respect of copyright was completed in October 2005. A local computer outlet was raided in July 2005 for allegedly selling unlicensed Microsoft products in contradiction with an Anton Pillar Order. The action was initiated by the Business Software Alliance, which has an anti-piracy programme in nearly 100 Countries worldwide including Trinidad and Tobago. The infringers gave the Supreme Court an undertaking that it would never offer for sale, or sell any of the company's products without permission in the future and willingly agreed to the terms of the settlement proposed by the Alliance.

The International Cricket Council (ICC) Cricket World Cup 2007

The ICC Cricket World Cup is the premier cricket event for ICC. All eligible cricket teams compete for the coveted ICC Cricket World Cup, monetary prizes, and the title of World Cricket Champions. It is estimated that the Event has over 2 billion viewers worldwide. The prestige of such an event and its global reach makes it a target for "ambush marketing" by third parties who are not official licensees, suppliers or sponsors, as they try to exploit certain commercial advantages surrounding the Event, even though they have not paid to do so. It is for this reason that an Anti-Infringement Programme (AIP) was developed by ICC.

ICC Anti-Infringement Programme (AIP)

The AIP consists of an integrated set of activities and legislation that will seek to prevent attempts at ambush marketing. These activities include:

- The protection of Event logos and mascot via trade mark registration.
- Government action in the form of the ICC Cricket World Cup 2007 West Indies Act (Sunset Legislation) to assist in the control of ambush marketing
- The appointment and instruction of law firms in the Caribbean to assist in monitoring for infringement activities and to take action against certain infringers
- The pre-preparation and distribution to appointed law firms of template legal documentation, which may be required to deal with an infringement
- Engagement of the rights compliance and internet monitoring specialist firm-Projector Net Result
- An AIP Public Information/Awareness Campaign
- Publication of caution notices

- Providing information as to how sponsors, Local Organising Committees (LOCs), broadcasters, merchandise licensees can help

The Implementation of AIP

Sunset Legislation:

After the results from the ICC review of the bids from the respective Countries of the Caribbean region to host matches during the Event were revealed in 2004, the successful Countries of the region feverishly began preparations for the Event. The successful Countries are Antigua and Barbuda, Barbados, Guyana, Grenada, Jamaica, St. Lucia, St. Kitts, St. Vincent and the Grenadines, and Trinidad and Tobago.

The first activity to commence was the drafting of the Sunset Legislation. A Legal Affairs Committee of Caribbean Common Market (CARICOM) was established comprising of the Attorneys-General of CARICOM. The committee completed a draft that is regarded as “a suitable submission for the parliaments of the region”. The nine Host venues will use the draft as a model and produce a piece of legislation for their respective parliaments. As there is no one authority that can pass the draft bill, it must be passed in each of the nine parliaments to become law. The bill makes ambush marketing illegal and makes it a criminal offence and a civil wrong. Remedies may be sought under the existing laws. The High Court of Justice will have jurisdiction in these matters. It is expected that the Sunset Legislation will be fully implemented by November 2006.

Educational programmes

The Majority of the nine host Countries have already commenced educational and awareness building campaigns as part of the AIP. In Antigua and Barbuda several consultations were held under the auspices of the Local Organising Committee (LOC).

The senior legal council for Cricket World Cup Jamaica (CWCJ) made appearances on a local programme called “Good Morning Antigua” and on the Observer Radio to begin the process. He is expected to return to Antigua to lead some stakeholder consultations later this month. In addition, the AIP launch of media radio ads will take place during this month. Further programmes and systems will be launched as part of the AIP.

Similar activities have been conducted in the other host Countries. The senior legal council for CWCJ has been visiting the host Countries where he held consultations and briefings with the relevant stakeholders including members of the LOCs. Other activities were staged by the LOCs as part of the AIP. For instance, at the beginning of 2006, the St Kitts & Nevis' LOC announced that St. Kitts and Nevis is preparing to launch a countrywide Public Education campaign, to heighten awareness of certain regulations and requirements that must be adhered to for the Event. This has in fact commenced.

In Jamaica, the LOC in conjunction with the Jamaican Intellectual Property Office (JIPO) has been conducting consultations with potential licensees and other members of the public on the question of ambush marketing.

In Grenada, a special interaction Lecture Briefing session was organised by the Grenadian Bar Association that focused on the Sunset Legislation and the CWC Anti-Infringement Programme.

Other mechanisms

In January 2006, a local Barbadian official from the merchandising and licensing department announced that a special coded device to prove authenticity will be attached to the official merchandise manufactured for CWC 2007. The small device would be used to combat counterfeiters. The “DNA” tag as it is called will be able to track how many items are being sold. It will be attached to clothing, towels, bags, and other novelty items being used to commemorate the Event. Specially appointed DNA police will be responsible for reporting any infringement, and the offenders could be charged and prosecuted under the supporting legislation.

Future Activities

It is the intention of the majority of the Caribbean Countries to implement an intensified program of activities relating to enforcement of IP rights. More local and regional enforcement, educational and outreach programmes with a view to strengthen the existing enforcement mechanism must be implemented in order to promote creativity and enhance investor confidence. Currently, outreach and public education plans are being developed on a national level in each territory to bring intellectual property to the general public in terms of their rights and obligations. The regional workshop on outreach strategies that was held in Jamaica provided the participants and the facilitators with ideas and also emphasized the need for the sharing of resources and ideas throughout the region. It is the region’s intention to design more programmes geared towards the youth, and to ensure that the national education programmes will insert intellectual property topics in the school’s curriculum.

WIPO is in the process of working with a regional consultant and national governments to draft a teaching tool for primary and secondary schools. A tool has been designed for tertiary education, and is being reviewed and refined. Additionally, a Caribbean IP Video has been commissioned for use as a public education and outreach tool, which highlights the achievements of Caribbean artists, inventors, etc. within the IP context. It will be designed to show that IP is not just a foreign concept, but something that affects their friends, family, neighbours and selves.

The Government of Antigua and Barbuda is currently reviewing the existing intellectual property system with a view to include more services that would serve to boost the creators’ confidence, and encourage creativity. This will result in an increase in staff at ABIPCO, and the availability of financial and other resources necessary to support the new ventures. Future activities for Antigua and Barbuda will include the following:

- Training of members of staff at ABIPCO
- Educational programmes geared towards agents and their administrative staff, the consumers, and the entrepreneurs
- Outreach programmes geared toward small and medium size enterprises, broadcasting agencies, and media houses
- Workshop on branding
- Colloquium for Parliamentarians and other policy makers

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