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RECENT ACTIVITIES OF WIPO IN THE FIELD OF INTELLECTUAL PROPERTY ENFORCEMENT AND FUTURE WORK OF THE ACE

prepared by the Secretariat

I. ACTIVITIES OF WIPO IN THE FIELD OF INTELLECTUAL PROPERTY ENFORCEMENT FROM MAY 2004 TO APRIL 2006

1. For the Advisory Committee on Enforcement (ACE) to review the activities of the World Intellectual Property Organization (WIPO) in the field of intellectual property enforcement, the Secretariat prepared an overview of education, training and awareness-raising activities relating to, or including, intellectual property enforcement issues organized by, or held with the participation of, WIPO from May 2004 to April 2006. This overview is contained in paragraphs 2 to 22, below, and covers the period since the Committee's last review at its second session¹. It should be read together with the list of activities available via the Enforcement website of WIPO at http://www.wipo.int/enforcement/en/activities/activities_06.html. These activities were undertaken through the WIPO Enforcement and Special Projects Division, which serves as the focal point for enforcement activities in the International Bureau, in close cooperation with the other WIPO sectors concerned.

¹ The second session of the ACE was held in Geneva from June 28 to 30, 2004. In that session, discussions on WIPO's activities were based on document WIPO/ACE/2/2 which covered the period from May 2003 to April 2004.

A. Training and Awareness-Raising

2. At its second session, the ACE noted with particular satisfaction the considerable number of enforcement-related training and awareness-raising activities undertaken by WIPO, or with the participation of WIPO². The issue of education and awareness-raising, including training, was generally considered particularly relevant for effective intellectual property enforcement, and, on this basis, selected by the Committee as the theme for its third session³. At the thirty-second session of the WIPO General Assemblies, held from September 26 to October 5, 2005, in Geneva, delegations unanimously expressed their appreciation of the choice of this theme for the third session of the ACE, and encouraged this body to continue its work⁴.

Seminars, colloquia and workshops on intellectual property enforcement issues

3. Taking due account of these conclusions, WIPO, in response to the large number of requests for assistance by Member States, continued to organize, or participate in, seminars, colloquia and workshops, each designed to address specific issues related to the enforcement of intellectual property rights. These events were attended, in particular, by judges and magistrates, customs and police officials, officials from intellectual property offices, intellectual property attorneys, representatives from the business community, and consumer groups. Many of these events were organized with the assistance of Member States, and/or in cooperation with intergovernmental and non-governmental organizations. The Secretariat has prepared a list of these training and awareness-raising activities, which is reproduced in the Annex of this document. The activities mentioned there include those with enforcement components which are not reflected in the titles of the respective activities.

Special focus: Development of judicial expertise

4. At its second session, the Committee noted the particular role of the judiciary in the enforcement of intellectual property rights, and agreed on the global importance of continued judicial training and sensitization of the judiciary in this field⁵. In line with these conclusions, WIPO put a certain emphasis in its training activities on the development of judicial expertise in the field of intellectual property disputes.

5. In that respect, a considerable number of the colloquia and workshops referred to in paragraph 3 above, and listed in the Annex to this document, were specifically designed to meet the interests of judges and magistrates.

6. In addition, activities aimed at facilitating access to relevant case law were developed. In many countries, a lack of sufficient precedent is frequently identified as a significant obstacle to the effective adjudication of intellectual property-related disputes. To address this need, WIPO has undertaken to publish collections of annotated case law. The first case book, entitled "The Enforcement of Intellectual Property Rights: A Case Book", was issued in December 2005. Prepared by The Honorable Justice Louis Harms, Judge of Appeal, Supreme

² Paragraph 18 of document WIPO/ACE/2/13.

³ Paragraph 21 of document WIPO/ACE/2/13.

⁴ Document WO/GA/32/11.

⁵ Paragraphs 7 and 8 of document WIPO/ACE/2/13.

Court of Appeal of South Africa, the case book analyzes carefully selected court decisions in the different fields of intellectual property, drawn from various countries, in particular those with a common law tradition. A second publication, focusing on court decisions in intellectual property matters from countries with a civil law tradition, is under preparation.

7. Moreover, to facilitate access to case material which is made available online, WIPO launched, on its enforcement website, a compilation of links to freely accessible online databases that contain, exclusively or partly, court decisions or decisions of administrative bodies in the field of intellectual property law, or extracts of such decisions. The compilation, made available in December 2005⁶, is based on information which, following a request by WIPO in early 2005, was submitted to WIPO by participants of the IPEIS Forum as well as by the International Bar Association (Intellectual Property and Entertainment Law Committee). To further develop this service, members and observers of the ACE are invited to submit additional information, where available.

Awareness-raising: anti-piracy and anti-counterfeiting outreach campaigns

8. To facilitate the development of outreach campaigns in the field of intellectual property at the national level, WIPO has undertaken to prepare an Outreach Guide which would provide an overview of examples of such campaigns in a large number of countries. One of the three modules focuses on campaigns in the field of combating counterfeiting and piracy which aim to raise awareness at different levels, for instance for law enforcement officials, at the school and university level, or for consumers in general. The guide is currently being finalized and is intended to be published online on the WIPO website in mid-2006.

B. Legislative Advice to Member States and Legal Comments in Intellectual Property Enforcement Matters

9. Upon request by Member States, WIPO prepares comments on draft laws and provides draft provisions, in areas of substantive intellectual property law and intellectual property law enforcement. In the latter respect, comments by WIPO analyze the compatibility of the respective draft laws with the enforcement-related obligations under the Agreement of Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) as well as the WIPO-administered treaties. In the period under review, WIPO's Enforcement and Special Projects Division prepared such intellectual property enforcement-related sets of comments on six draft laws of Member States, addressing a wide range of legal issues relating to infringement and liability, civil procedures and remedies, provisional measures, criminal sanctions and border measures.

10. In addition, the Enforcement and Special Projects Division prepared detailed suggestions and comments to revise, in line with international copyright enforcement obligations, enforcement-related provisions that serve as a basis for the WIPO draft copyright laws which will be prepared upon request by Member States.

⁶ http://www.wipo.int/enforcement/en/case_law.html.

11. Following a request by the Hague Conference on Private International Law, WIPO submitted, in May 2005, a set of comments on the draft Convention on Choice of Court Agreements, negotiated under the auspices of that organization. The comments analyze the draft provisions which concern disputes involving intellectual property matters, and comment, in particular, on their compatibility with the WIPO-administered treaties⁷. The Convention, defining a new international legal framework on certain aspects of jurisdiction as well as the recognition and enforcement of judgments in civil and commercial matters, was adopted in the twentieth diplomatic session of the Hague Conference on Private International Law, held from June 14 to 30, 2005⁸. WIPO and the Hague Conference on Private International Law have mutual observer status.

C. Coordination and Cooperation with Other Enforcement Initiatives at the International Level

12. Coordination with other stakeholders at the international level, as emphasized in the mandate of the ACE⁹, has been strongly developed in the period under review. WIPO, in that respect, plays an active role, and its cooperation is sought in a number of international enforcement initiatives, focusing on different aspects related to intellectual property enforcement. The following highlights some of the most important areas of recent cooperation. A complete list of organizations with which WIPO maintains close cooperation in the field of intellectual property enforcement is made available on the WIPO Enforcement website¹⁰.

Cooperation with the World Customs Organization (WCO)

13. In the period under review, there was close cooperation with the WCO in the field of intellectual property enforcement training and awareness-raising. Its WCO IPR Strategic Group provided specific expertise in numerous WIPO activities focusing on intellectual property enforcement at the customs level, and WIPO participated as an observer in meetings of the WCO IPR Strategic Group.

*Cooperation with the Organisation for Economic Co-operation and Development (OECD):
Measuring the economic impact of counterfeiting and piracy*

14. In 2005, the OECD started preparations for a study on the economic implications of counterfeiting and piracy. Cooperation with WIPO in that context was sought at an early stage. It was agreed that WIPO, through its Enforcement and Special Projects Division, would contribute to the study by providing advice on a number of legal questions which may arise in connection with the study. Further cooperation, focusing on the economic aspects involved, is being developed with WIPO's Office of Strategic Use of Intellectual Property for Development.

⁷ Preliminary document No 29 of May 2005 (Addendum 1), available at http://www.hcch.net/upload/wop/jdgm_pd29_add.pdf.

⁸ http://www.hcch.net/index_en.php?act=conventions.text&cid=98.

⁹ Paragraphs 114 (ii) and 120 of document WO/GA/28/7.

¹⁰ <http://www.wipo.int/enforcement/en/cooperation.html>.

15. In addition, on October 17 and 18, 2005, the OECD and WIPO jointly organized, at WIPO's headquarters in Geneva, an expert meeting on measurement and statistical issues related to counterfeiting and piracy. The meeting allowed an exchange of views among the participating experts on methods and techniques that are, or could be, used to measure magnitude, scope and economic effects of counterfeiting and piracy¹¹.

Cooperation with the World Health Organization (WHO): Combating counterfeit medicines

16. In connection with the WHO-led initiative to combat counterfeit medicines, cooperation between WIPO and WHO was intensified. WIPO participated at a conference, organized by WHO and held in Rome from February 16 to 18, 2006, which aimed at building stronger and more effective international cooperation in this field. In a declaration adopted by the participants, representing national drug regulatory authorities as well as international governmental and non-governmental organizations, industry associations, and others, a number of recommendations were formulated. On the institutional level, the establishment of an International Medical Products Anti-Counterfeiting Taskforce (IMPACT) was recommended¹². This taskforce would, subject to approval by the competent bodies, be organized under the auspices of WHO and consist of representatives of relevant stakeholders. Its objective would be to explore further mechanisms for strengthening international action against counterfeit medicines, including through legislation, regulation, enforcement, technology and risk communication. WIPO offered its continued assistance in this new framework.

D. Facilitation of Information Exchange

17. In its second session, the Committee approved the proposal made by the Secretariat in paragraph 6(i) of document WIPO/ACE/2/2 to open the "Information Exchange" part of the IPEIS Forum to a larger audience of stakeholders by no longer requiring registration as a precondition to submit information to, or to access information contained in the databases of, this platform. The Secretariat restructured the IPEIS Forum accordingly, and the "Information Exchange" is accessible without registration formalities¹³.

18. To provide a source of information on current developments in the field of intellectual property enforcement, both within WIPO and with a view to developments in Member States and cooperating organizations, the Enforcement and Special Projects Division compiles and makes available, on a quarterly basis, intellectual property enforcement newsletters. These newsletters are published on the WIPO Enforcement website¹⁴, and are also distributed by electronic mail to participants of the IPEIS Forum. Members and observers of the ACE are invited to submit to the Secretariat any relevant information which they wish to have included in these newsletters.

19. With a view to the general public, the WIPO Enforcement and Special Projects Division also contributes to the dissemination of basic information related to intellectual property enforcement. For instance, the March/April 2006 issue of the WIPO Magazine

¹¹ <http://www.wipo.int/ipeis/en/>

¹² <http://www.wipo.int/enforcement/en/news/>

¹³ Paragraph 16 of document WIPO/ACE/1/7 Rev.

¹⁴ Paragraph 18 of document WIPO/ACE/1/7 Rev.

featured a series of articles on intellectual property enforcement, including a case study and an update on WIPO's recent activities¹⁵. It is planned to have a similar emphasis in the May/June 2006 issue.

II. FUTURE WORK

20. In its first session, the ACE agreed on a thematic approach for its sessions and the inclusion of expert presentations related to the selected theme¹⁶. In this regard, the second session analyzed and discussed the role of the judiciary and quasi-judicial authorities, as well as of the prosecution, in enforcement activities (including related issues such as litigation costs)¹⁷, while the third session, it was agreed, should consider the issue of education and awareness-raising, including training, concerning all factors relating to enforcement, primarily those that are indicated in requests for assistance by Member States¹⁸.

21. For selection of a theme governing the discussions in the fourth session of the ACE, the Secretariat has received one proposal, by the United States of America, reproduced below:

“Although the costs of counterfeiting and intellectual property piracy (and the benefits of reducing counterfeiting and piracy) are beginning to come into sharper focus, more work remains to be done. To help fill some of these knowledge gaps, the WIPO Advisory Committee on Enforcement should discuss and analyze the relationship between the rates of counterfeiting and piracy of intellectual property and technology transfer, foreign direct investment and economic growth. The WIPO Secretariat could assist in the collection of data on piracy rates.”¹⁹

¹⁵ The WIPO Magazine issues are available online, in English, French and Spanish, at http://www.wipo.int/freepublications/en/?sub_col=mag.

¹⁶ Paragraph 16 of document WIPO/ACE/1/7 Rev.

¹⁷ Paragraph 18 of document WIPO/ACE/1/7 Rev.

¹⁸ Paragraph 21 of document WIPO/ACE/2/13.

¹⁹ Annex of document PCDA/1/4, under Section 6. The proposal was submitted in the first session of the Provisional Committee on Proposals Related to a WIPO Development Agenda, held from February 20 to 24, 2006.

22. Delegations wishing to propose other themes for discussion within the mandate of the ACE²⁰ are invited to submit their suggestions to the Secretariat.

23. The Advisory Committee is invited to take note of the information contained in this document and to consider the proposal referred to in paragraph 21, as well as other proposals, if any, submitted under paragraph 22.

[Annex follows]

WIPO/ACE/3/2

ANNEX

OVERVIEW OF EDUCATION, TRAINING AND AWARENESS-RAISING ACTIVITIES
RELATING TO OR INCLUDING INTELLECTUAL PROPERTY ENFORCEMENT
ISSUES ORGANIZED BY, OR HELD WITH THE PARTICIPATION OF, WIPO
FROM MAY 2004 TO APRIL 2006

- National Workshop on Enforcement of Intellectual Property Rights for Prosecutors and Police Officers in Santiago, Chile, May 3-4, 2004;
- WIPO-USAID Sub-regional Seminar on the Enforcement of Intellectual Property Rights in Almaty, Kazakhstan, May 12-13, 2004;
- WIPO Forum on Intellectual Property and SMEs (two panel sessions on IP enforcement) in Alicante, Spain, May 27-28;
- Technical Assistance Information Exchange Office (TAIEX) of the European Commission/TAIEX/WIPO Workshop for the Judiciary, Police and Customs on the Enforcement of IPRs in Banská Bystrica, Slovakia, May 27-28, 2004;

²⁰ Paragraph 114(ii) of document WO/GA/28/7 reads: “The mandate of the Committee in the field of enforcement, which excludes norm setting, was limited to technical assistance and coordination. The Committee should focus on the following objectives: coordinating with certain organizations and the private sector to combat counterfeiting and piracy activities; public education; assistance; coordination to undertake national and regional training programs for all relevant stakeholders and exchange of information on enforcement issues through the establishment of an Electronic Forum.”

- *Séminaire national de l'OMPI sur l'importance socio-economique et culturelle de la protection du droit d'auteur et des droits voisins et les retombées de la piraterie à l'attention des journalistes* in Alger, Algeria, June 1, 2004;
- WTO Regional Workshop on Certain Topical Issues in Regard to Intellectual Property for English-speaking African Countries in Sandton (Johannesburg), South Africa, June 2-4, 2004;
- WIPO Colloquium in Intellectual Property for Judges from Sudan in Geneva, June 14-18, 2004;
- National Workshop on Intellectual Property Law Enforcement in Nairobi, Kenya, June 16-17, 2004;
- Colloquium on Intellectual Property for Judges, Magistrates and Members of the Kenya Industrial Property Tribunal in Nairobi, June 18-19, 2004;
- EU Conference “The TRIPS Agreement – Ten Years Later” in Brussels, Belgium, June 23-24, 2004;
- Technical Assistance Information Exchange Office (TAIEX) of the European Union Conference on Intellectual Property in a Changing Society in Warsaw, Poland June 23-25, 2004;
- WIPO National Roving Workshop on the Enforcement of Intellectual Property Rights in Hanoi and Ho Chi Minh City, Viet Nam, July 5- 9, 2004;
- WIPO National Seminar on Enforcement of Copyright and Related Rights in Colombo, Sri Lanka, July 20-21, 2004;
- WIPO Workshop on the Enforcement of Intellectual Property Rights for Police and Customs Officers, in Port of Spain, Trinidad & Tobago and Castries, St. Lucia, September 6 to 10, 2004;
- Balkan Legal Forum 2004 organized by the Legal Development Foundation - European Forum of the International Bar Association in Sofia, Bulgaria on September 15, 2004;
- Operational Seminar on the Role of the Customs in Combating Counterfeiting & Piracy, organized by the CARDS Regional Project for Intellectual Property Rights Protection in the Western Balkans, in collaboration with the European Commission Directorate-General for Taxation and the Customs Union, in Belgrade, Serbia and Montenegro, October 4-7, 2004;
- WIPO National Specialized Symposium for the Jordanian Judiciary in Dead Sea, Jordan, October 7–9, 2004;
- WIPO National Specialized Symposium for Members of the Jordanian Judicial Institute in Dead Sea, Jordan, October 10 – 12, 2004;
- WIPO National Seminar on the Enforcement of Intellectual Property Rights for Customs Officials in Amman, Jordan, October 14, 2004;
- WIPO Colloquium on Intellectual Property for Judges from China, October 15-19, 2004, Geneva/Berne/London, organized in cooperation with the Swiss Federal Institute of Intellectual Property and the UK Department for Constitutional Affairs;
- National Seminar for the Judiciary and Other Law Enforcement Agencies on the Enforcement of Intellectual Property Rights in Yerevan, Armenia, October 26-27, 2004;
- WIPO Colloquium for Judges for Romania, in cooperation with the European Patent Office, the German Federal Patent Court and the Swiss Federal Institute of Intellectual Property, in Geneva, Berne and Munich, November 15-26, 2004;
- WIPO National Workshop for Judges in Riyadh, Saudi Arabia, December 13-15, 2004;
- WIPO National Seminar on Intellectual Property for the Princess Sumaya University for Technology (PSUT) in Amman, Jordan, January 11–12, 2005;

- WIPO National Seminar on the Promotion, Protection and Enforcement of Intellectual Property Rights in New Delhi, India, February 17–18, 2005;
- TAIEX Seminar on Enforcement of IPRs in Ljubljana, Slovenia, March 15-16, 2005;
- *Séminaire national de l'OMPI sur la contrefaçon et la piraterie dans le domaine audiovisuel* in Rabat, Morocco, April 5–6, 2005;
- Summit on Proven Strategies for Countering Counterfeiting & Infringement of IP Rights, under the auspices of the Ministry of Supply and Internal Trade of Egypt in Cairo, May 4-5, 2005;
- WIPO Regional Training Course on Trademarks for Officials of Caribbean IP Offices, in Jamaica and Trinidad and Tobago, June 6-10, 2005;
- TAIEX Workshop on Enforcement of Intellectual Property Rights in a Modern Society in Banska Bystrica, Slovakia, June 29–30, 2005;
- WIPO/WTO Colloquium for Teachers of IP at WIPO/WTO headquarters in Geneva, June 27 to July 8, 2005;
- WIPO-UN/ECE-WCO Subregional Seminar on Enforcement of Intellectual Property Rights (IPRs) in Almaty, Kazakhstan, July 5 – 7, 2005;
- WIPO Summer School on Intellectual Property in Geneva from July 4 to 29, 2005;
- WIPO–USPTO Academy for the Judiciary on the Enforcement of IPRs in Washington DC, USA, July 23–29, 2005;
- First Andean Regional Meeting for the discussion of a document containing a harmonized legal regional framework on border measures on IP in Lima, Peru, August 22–23, 2005;
- WIPO Asia-Pacific Regional Symposium on the Protection and Enforcement of IPRs in Kuala Lumpur, Malaysia, September 13–14, 2005;
- *Atelier sous-régional de l'OMPI sur la mise en œuvre des droits de la propriété intellectuelle à l'intention des pays francophones d'Afrique* in Yaoundé, Cameroun, September 13–16, 2005;
- Cooperation Council for Arab States of the Gulf (GCC) Fourth Meeting on Commercial Fraud and Counterfeiting in Abu Dhabi, UAE, September 20–21, 2005;
- WIPO/FIT Japan Regional Training Course on the Enforcement of Intellectual Property Rights in Tokyo, Japan, October 11–21, 2005;
- WIPO Seminar on Intellectual Property Rights in Cariló, Argentina, October 13–15, 2005;
- WIPO Colloquium for Romanian Judges, in cooperation with the European Patent Academy and the Swiss Federal Institute of IP in Geneva, Munich and Berne, October 17–28, 2005;
- WIPO Workshop on the Enforcement of IPRs for Police and Customs Officers in Kingstown, Saint Vincent and the Grenadines, November 7 and 8, 2005;
- WIPO Workshop on the Enforcement of IPRs for Police and Customs Officers in Bridgetown, Barbados, November 10 and 11, 2005;
- WIPO Workshop on the Enforcement of IPRs for Police and Customs Officers in Saint John's, Antigua and Barbuda, November 14 and 15, 2005;
- WIPO/CISAC Joint Regional Colloquium for the Judiciary on Copyright and Related Rights in Singapore, November 14–15, 2005;
- WIPO / Japan Copyright Office (JCO) Special Training Course on the Enforcement of Copyright and Related Rights in Tokyo, Japan, November 14–25, 2005;
- WIPO Workshop on the Enforcement of IPRs for Police and Customs Officers in Kingston, Jamaica, November 17 and 18, 2005;
- National Workshop on the Enforcement of Intellectual Property Rights in Maputo, Mozambique, November 21–23, 2005;

- Mauritius, Retreat for Judges and Magistrates on Intellectual Property Enforcement in Mauritius, November 25, 2005;
- Seminar on the Infringement of Copyright and Related Rights in Mexico City, November 28-30, 2005;
- *Rencontre relative à la fraude et la contrefaçon dans l'Union économique et monétaire ouest africaine (UEMOA): Quels moyens pour une lutte plus efficace?* in Ouagadougou, Burkina Faso, November 28–30, 2005;
- *Séminaire itinérants de l'OMPI sur la protection et la défense des marques et dessins et modèles industriels*, in Tunis and Sfax, Tunisia, December 5 –6 and 8– 9, 2005;
- National WIPO Seminar for Judges on Intellectual Property Rights and their Enforcement in Guatemala, December 5–6, 2005;
- Colloquium on IP for Judges from Sudan in Geneva, December 5–9, 2005;
- National WIPO Seminar for Judges on Intellectual Property Rights and their Enforcement in San Salvador, December 7, 2005;
- National WIPO Seminar for Judges on Intellectual Property Rights and their Enforcement in San José, December 9, 2005;
- WIPO National Seminar on the Enforcement of Copyright, Related Rights and Collective Management in Khartoum, Sudan, February 28 to March 2, 2006;
- *Séminaire national de l'OMPI à l'intention des élèves magistrats et greffiers de l'Ecole d'administration et de la magistrature du Burkina Faso*, in Ouagadougou, Burkina Faso, March 7-10, 2006;
- *OMPI-CISAC-SACEM-AIF Séminaire-atelier de formation des magistrats sur la lutte contre la piraterie des oeuvres littéraires et artistiques*, in Ouagadougou, Burkina Faso, April 12-14, 2006;
- International Conference on Customs Protection and Enforcement of IPR, Seoul, Korea, April 19 and 20, 2006.

[End of Annex and of document]