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ROMANIAN EFFORTS TO IMPROVE AWARENESS OF DECISION MAKERS
AND PUBLIC ON ISSUES RELATED TO THE ENFORCEMENT
OF INTELLECTUAL PROPERTY RIGHTS*

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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.

ROMANIAN EFFORTS TO IMPROVE AWARENESS OF DECISION MAKERS
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OF INTELLECTUAL PROPERTY RIGHTS

Focus areas:

- ✓ Information on activities to raise the awareness of decision makers
- ✓ Sensitization of consumers in the field of IP enforcement
- ✓ Information exchange and other measures to broaden the experience of judiciary in handling IP cases
- ✓ Capacity-building and educational programs to enhance the skills of customs and police officials in the area of enforcement of IP rights
- ✓ Development of national enforcement strategies to enhance awareness, improve education and provide practical training
- ✓ Examples of successful work in the field of enforcement of IP rights

1. Overall approach

Romania is on the verge of joining the European Union on January 1st, 2007. This means entering one of the widest free markets worldwide – the EU internal market, where the free movement of goods, workers, services and capital is a given. Restrictions thereof are eliminated and the competition pressure is one of the driving forces. Within this environment, one of the few “balancing tools” allowed is the protection of the intellectual property. And it should not be underestimated since it is one of the essential incentives for innovation and technology transfer, establishing a fair balance between the interest of the innovator and the consumer. Therefore the innovator *lato-sensu* has the right for a certain period to protect the product of its invention while the consumers are given conditional access. Maintaining the balance of this equation is not an easy thing for the state authorities, as both parties tend to go beyond what is necessary to obtain profit. However, once the invention disclosed, the innovator is the party at lose in most of the cases, as the practice showed in all our states that unfortunately there are many those to trespass the protection offered by intellectual property legislation, to get unfair profit. And here the state authorities should intervene and restore the balance, for example by fighting piracy and counterfeiting.

As regards the infringement of the IPR in Romania and the reaction of the Romanian authorities, the 2005 EU Commission Comprehensive Monitoring Report states that the enforcement of the **protection of intellectual and industrial property rights** remains an area of serious concern and while the legislation corresponds to the EU standards, the enforcement of IPR continues to cause significant problems which have to be addressed as a matter of high priority. Urgent attention should be given to step up the fight against piracy and counterfeiting, to improve the cooperation between law enforcement agencies, the general prosecutor and the judiciary, to strengthen the border control capacity and to intensify staff training.

Nevertheless when this report was written a number of effective measures had already been taken, whose results were duly reflected in the February 2006 peer review evaluation mission: *Since the last Peer Review¹ there have been clear developments particularly in institutional cooperation, collaborative enforcement and in the legislative framework.* The evaluation team

¹ August 2005.

was also extremely impressed with the solid training plans that have been adopted and the greater capacity being afforded to enforcement bodies. It was concluded that Romania has a strong desire and will to develop a robust IP system that will help protect innovators and creators and will support competitive and fair markets.

All these efforts, which were by no means an easy task, will be focused hereon; the key words for progress in this field are *awareness*, *coordination* and *specialization* as the experience of last years has proved in Romania. And this is the subject this paper focuses on: raising awareness among authorities and society about the importance of protecting the intellectual property, ensuring coordination among competent state authorities and private stakeholders for the successful enforcement of IP rights, and training specialist to deal with these IP challenges within various sectors.

The main sections of the presentation shall cover:

- The competent institutions, their role and efforts to improve the enforcement/capacity building
- Instruments – national strategies and action plan
- Judiciary
- Awareness & Training
- Working methods and monitoring
- Examples of successful work
- Legislative framework

2. Competent institutions and capacity building

There are two exclusively specialized Romanian institutions to deal with the protection of the IP rights: the State Office for Inventions and Trademarks (OSIM) – for the industrial property and the Romanian Copyright Office (ORDA) – for copyright and related rights.

In addition, several other institutions come to complete the institutional framework in this field as the Ministry of Administration and Internal Affairs – police and border police, the prosecutors' offices and courts, Ministry of Justice, Customs Administration, Consumer Protection Authority, Ministry of Education and Research, Ministry of Economy and Commerce, Ministry of European Integration, National Chamber of Industrial Property Advisers, etc.

This is not the place to mention their competences within the IP field, which are similar to that of the most member states. Nevertheless a common and important feature that entailed developments on the enforcement of IP rights is that the institutions most involved within IPR enforcement activities **specialize personnel** and set up specialized units to deal with IP. This proved critical for achieving results. Cooperation of these institutions with OSIM and ORDA, based on the protocols, is also essential for the IPR enforcement, given their specialization and their role as information hubs in this field.

It should be mentioned that, according to the Action Plan, the new Government **re-enforced the administrative capacity** of the institutions involved in the enforcement of IPR.

Specialized staff was appointed within the Customs Authority (**479** officers have been appointed in all customs offices), ORDA (**32** new positions have been created through an Ordinance on strengthening ORDA's capacity, on January 26, 2006), the General Inspectorate of the Romanian Police (**102** police officers have been appointed with exclusive competence for the investigation of IPR crimes), Border Police (a number of **58** specialised officers have been appointed with exclusive competence for the investigation of IPR crimes) and the Public

Ministry (by setting up of a central IP unit of 10 prosecutors, and appointing specialized prosecutors in each county office²).

The international cooperation is also to be stressed and thanked for, as international organisations and member states have supported the development of IPR enforcement all these years. Special mention should also be made to the Phare projects that were designed particularly to this end like the 2001 program. A new project, within the Phare 2005 exercise is due to start - “*Strengthening the Romanian institutional capacity of protecting the intellectual and industrial property rights*”, which considering the progress achieved so far is expected to raise even higher the level of IP enforcement. Its main objectives are:

- Institutional strengthening (further improving inter-institutional cooperation, revision of legal framework, improvement of working methods, development of a methodology of estimation of the piracy rate, training);
- Awareness raising through organization of public campaigns;³
- Development of a common IT database for the institutions involved.

The particularly active cooperation between Romania and WIPO is also playing a major role in enforcement capacity-building, as well as in developing a strategic approach to IP. Further details of this cooperation shall be highlighted further in this report.

3. Instruments – national strategies and action plan

To help remedy the growing threat and effects of IP crime and to respond to criticisms, in 2003 the Romanian Government introduced a *National Strategy in the field of Intellectual Property* aimed at better IPR protection and enforcement. This emerged from a working group composed of representatives of all institutions having competencies in IP field and with the generous conceptual contribution of WIPO.

The Strategy set out to ensure cooperation between institutions involved in IP, to reduce the level of violations through tighter border controls and introduce more stringent policing. While indicative of the growing desire in Romania to combat counterfeiting and piracy, more had to be done to ensure well-defined performance and monitoring mechanisms were put in place.

At the beginning of 2005 work begun to establish clear cut measures for implementing the Strategy. Thus, between April and June 2005 the relevant authorities issued an Action Plan which sets out clear objectives:

- to improve laws and to bring the Romanian legal framework in line with the ‘*Acquis Communautaire*’ and international standards,
- to strengthen the administrative capacity of the Prosecutors Office, ORDA, Police, Customs Authority,
- to improve collaboration between IP related institutions, including by setting up a central IP database,
- to increase the efforts on preventing and combating infringements of IPR, as counterfeiting and piracy.

² See section 4.2, below.

³ For more details see section 7 “Effective enforcement & awareness raising”.

Given its importance the Plan was adopted by the Government⁴ on September 29th, 2005 and its implementation is monitored by the specialized structure within the Public Ministry, the Ministry of Justice, as well as by the European Commission.

According to the Action Plan, permanent contacts and active cooperation between State institutions were established; they include: the Ministry of Justice, ORDA, OSIM, the General Customs Authority, the General Inspectorate of Romanian Border Police and the General Inspectorate of Romanian Police).

All further actions to improve the enforcement of IPR are construed along the Strategy and the Action Plan.

4. Judiciary

1. Ministry of Justice

There are several reasons for having a thorough focus on the judiciary: my work experience with the Ministry of Justice, the important role of the judiciary where the IP rights come eventually to be protected and enforced; and the increasing awareness for the IP area over the last years and the developments thereof. The last EU evaluation mission on IP, from February 2006, is illustrative in this respect⁵.

Along the preparations for the accession to the European Union, the Ministry of Justice (MoJ) was the *integrator of Chapter 5 of the negotiations – Company law*. In this capacity, MoJ had the obligation to monitor and centralize from other institutions, and to subsequently submit to the EU authorities, information regarding the stage of harmonization of the national legislation with the relevant *acquis* and its due *implementation*, including IP.

It is to be underlined that the MoJ does not have operative attributions on the enforcement of IPR. In this context, and given the need for improving the inter-institutional cooperation, MoJ had a *pro-active approach* in facilitating the cooperation among the governmental institutions with competences in IPR enforcement and between these institutions and private sector representatives.

The *Ministry of Justice assists the Public Ministry* in the process of monitoring the IP Action Plan and coordinating the activities in the field. It also **initiates before the Government** proposals to improve the **legislative framework**.

⁴ Government Decision no.1174/2005 adopting “*The Action Plan regarding urgent common measures with a view to improve the enforcement in the area of Intellectual Property Rights(2005-2007)*”

⁵ “*The Ministry of Justice has been a fulcrum for change. Under the Minister and the Chief Prosecutor there has been much change since the Review Report and Romania is extremely driven to develop stable and competitive markets and a favourable climate for investors. Therefore it now has an aggressive policy towards IP crime.*”

2. The Public Ministry (prosecutors offices)

A central role in ensuring the proper enforcement of IPR and coordination of the various institutions in this field was recently entrusted to the General Prosecutors Office (GPO)⁶, part of the Public Ministry.

According to the Romanian Constitution the Public Ministry functions under the MoJ authority. It should be clearly stated that the MoJ retains no authority over cases but has only a coordinating role. According to the legal provisions, the minister of justice, upon proposal of the general prosecutor, set up, by Order 412/2006 an IPR specialized unit, within the GPO. The unit is composed of 10 specialized prosecutors that are organized in two tiers:

- an operative sub-unit – prosecutors effectively working on IPR cases and
- a studies sub-unit – prosecutors centralizing data countrywide, studying the process of investigation of IPR cases, drafting analyses and disseminating them in the country, for a correct, unified and efficient enforcement of IPR.

In addition, this structure is the central hub in coordinating the other institutions, by centralizing data needed for enforcement of IPR from the other institutions and private entities necessary for enforcement of IPR, coordinating the development activities of the Prosecutors Office and the prosecutors all over Romania (including resources and training), monitoring the implementation of National Strategy - Action Plan, organizing meetings to optimize the working methods and establishing best solutions to streamline the legislation and its implementation, ensuring communication and cooperation between Government institutions and anti piracy/counterfeiting groups.

Another important measure taken is the appointment in each prosecutor's office attached to tribunals of at least one prosecutor to deal with IP cases. Special training programs are designed and organised for these prosecutors. This measure, which is taken according to the Action Plan, should be seen within the context of bringing the penal IP cases up to the level of tribunals and prosecutors offices attached thereto and it reflects the importance now placed on IP crime.

3. The courts

The courts are established on a four layer structure: courts of first instance (178), tribunals (41), courts of appeal (15) and the High Court. As a rule, courts of first instance and tribunals share the competence in first instance. Whereas the courts of first instance have jurisdiction on simpler cases, tribunals rule on specialised matters.

The law on the organisation of the judiciary⁷ allows for the setting up of specialised panels, sections and courts. At present there are specialised panel in the courts to deal with IP cases either civil or criminal at the level of tribunals and courts of appeal, and they are established according to the number and nature of causes. There has been set up a Civil and Intellectual Property Section at the Bucharest Court of Appeal, in service since January 2005.

⁶ The General Prosecutors Office is officially named the Prosecutors Office attached to the High Court of Cassation and Justice and is the central prosecutorial structure that coordinates the other prosecutors offices countrywide. The GPO and the rest of the prosecutors offices, which function attached to the courts, form the Public Ministry.

⁷ Law no. 304/2004 on the organization of the judiciary, amended by the Law no. 247/2005.

The High Court of Cassation and Justice is organised in 4 sections. The civil and criminal sections include specialised panels for IP cases.

Following the amendment of the legislative framework in December 2005⁸, all IP cases are under the jurisdiction of the tribunals in first instance, the decisions thereby held may be appealed against before the courts of appeal. On certain grounds the law allows a second appeal on points of law, before the High Court.

4. The reform of the judiciary

For a correct assessment of the administrative capacity to deal with IP enforcement, one should necessarily be aware that the judiciary is subject to a comprehensive reform. Its results will be also beneficial to the IP enforcement and it's worthwhile to refer to the relevant measures pursued. The main targets of the reform are:

- ✓ properly endowing the courts
- ✓ unifying the jurisprudence
- ✓ reducing the duration of court proceedings
- ✓ reducing the workload of the courts
- ✓ specialisation of judges
- ✓ pursuing the efficiency of the act of justice using modern methods of management

The **budget** of the judiciary increased in 2005 through budgetary rectifications and the 2006 budget is **significantly higher** than the previous ones.

IT system for the Judiciary

Full endowment with IT equipment for courts and prosecutors' offices, including **internet access** was ensured in the first semester of 2006:

- ✓ **13,300 computers and other additional IT equipment for courts and prosecutors' offices**, amounting to EUR 18.5 million, were purchased in January 2006 and **delivered in March 2006**.
- ✓ **Access to information** (jurisprudence, court session schedule, file progress and statistical data) **of all courts was ensured through a web portal** launched in August 2005 (<http://portal.just.ro>).
- ✓ **The setting up of a secured wide area network (WAN) to connect the entire judiciary** (courts, prosecutors' offices, Superior Council of Magistracy and subordinated units, the Ministry of Justice, etc) **was approved** by Government Decision in October 2005. **Full internet access of all judges and prosecutors** (including access to legislation and jurisprudence database) is to be ensured by **July 2006**.

Infrastructure of the judiciary

- ✓ Additional to the budgetary efforts to improve the courts' infrastructure, **EUR 110 million** are granted by World Bank **for courts' endowment**. EUR 12 million are provided by the state budget for the infrastructure of the courts that are not included in the WB project.

⁸ Emergency Ordinance no. 190/2005 - see section no. 8 - *Legislation*. Before this amendment, unlike civil IP cases that were under the jurisdiction of tribunals, the penal IP cases were under the jurisdiction of the courts of first instance. The rationale behind is to have specialized panels and to make possible the training of more experience judges in a reduced number of courts.

The random distribution of cases in all courts

- ✓ **The system of random distribution of cases is functional countrywide by IT means.** This represents an efficient tool against corruption and increases litigants' trust in the judiciary. The duly implementation of the random distribution norms is surveyed by the Superior Council of Magistracy and the Ministry of Justice.

Alleviating the High Court of Cassation and Justice (High Court) workload

- ✓ **The problem of backlogs at High Court was solved in due time**, by both administrative and legislative measures. By March 2006, the **workload of the High Court Civil and IP Section was reduced by 82%, as compared to the situation of June 2004.**

Strengthening the administrative capacity of the Judiciary

- ✓ **The number of vacant judge positions constantly decreased in 2005** (561 vacancies in June 2005 vs. 385 in March 2006).
- ✓ The **economic management of the courts and prosecutors' offices** was professionalized and is now ensured by economic managers and the supporting staff.
- ✓ A methodology of **investment planning** for the judiciary was established, according to which each investment is efficiency-oriented, following a budgetary programming and prioritization.

Training judges and prosecutors

- ✓ The **administrative capacity of the National Institute of Magistracy** was strengthened (more staff, completed management scheme, extended premises).
- ✓ **The access of all judges and prosecutors to continuous training programmes was improved** (magistrates may enlist online to continuous training seminars; an **electronic data base of all participants to continuous training sessions** is in place, focusing the training on specialisation of judges and prosecutors) – 121 training sessions for 3000 magistrates in 2005.
- ✓ **Intensive training** was provided in 2005 for the networks of international judicial cooperation in criminal, civil and commercial matters.

Unification of jurisprudence; shortening the trials

- ✓ **The courts of appeal were given the power to ask the High Court to unify the jurisprudence** in civil matters. The same amendments to the Civil Procedure Code adopted⁹ in June 2005, **speeded up the court procedures.** *Similar solutions* were approved by the Government in September, 2005 for **the Criminal Procedure Code**, whose amendment is currently pending Parliamentary debates.
- ✓ High Court provides **internet and paper access to its decisions.**
- ✓ **Access to legislation and jurisprudence** is ensured in **real time** for **all judges.**
- ✓ **Simplified enforcement procedures** were adopted by the Government, on March 2nd, 2006

Two peer review evaluation missions on the judiciary were organised in 2005, to assess the state of fulfilment of Romania's commitments. **The conclusions were mainly positive and the recommendations were taken into account in planning further actions for the implementation of the Reform Strategy.** According to the **conclusions of the first peer review report** "*The changes and the determination to reform from the side of the MoJ are impressive as is the general quality of the reform strategy [...].*" Also, the **second peer review report** read: "*the main results of the peer review remain similar to the ones in June 2005: the*

⁹ Law no. 219/2005, published in the Official Journal no. 609/July 14th, 2005.

firm determination mainly of the Minister of Justice, but also of a significant part of the judiciary to reform the judiciary further, to implement the existing reform laws and to bring them into meaning for everyday judicial administration is still breathtaking. [...]".

A third peer review mission on the judiciary was organised in March 6th – 10th, 2006. The conclusions are positive, and the main findings referred to significant improvement in the automation of the judiciary, improvement on courts' infrastructure, progress on the improvement of the statistics system.

5. Awareness raising within authorities – specific training 2005-2006

The most efficient way to raise awareness among decision makers and various representatives of authorities entrusted with IP matters is proper training. Without training, enforcers lack understanding and often are not aware of the gravity of IP infringements, which was a major shortcoming in the past.

Following a PHARE 2001 Technical Assistance Project which shed light on the training needs for Romanian officials, the training sessions grew in number and quality. Judges, prosecutors, police, border police, custom officials, and other enforcement officials were involved in specific events comprising theoretical and practical aspects of IP, case studies, debates. Both national – ORDA and OSIM's experts were involved and foreign expertise was employed. EU experts, US Patent and Trade Marks Office, the FBI and WIPO have collaborated for special programs. A major side benefit of the reinforced training was the improvement of inter-institutional cooperation by bringing various institutions representatives within the same training sessions.

1. Judges and prosecutors

It should be pointed out that the training of judges and prosecutors is entrusted by law to a specialised institution – the National Institute for Magistracy¹⁰. It organises the training both for active magistrates as well as for future ones (initial training).

- ✓ 4 seminars attended by 81 judges were organised in 2005 within the TAIEX Project, set up jointly by the National Institute of Magistracy (NIM) and the EC TAIEX Office, for training Romanian judges and prosecutors in the field of EC law. The seminars' agenda included, among other topics, a presentation of IP Law, as a part of the *acquis communautaire*, and debates on relevant case law of the European Court of Justice. The seminars were organised at the NIM regional training centres, with the participation of foreign experts.
- ✓ 1 seminar attended by 18 judges was organised in May 12th – 13th, 2005, within the PHARE RO/02/IB/JH-10 Project - „Continuing assistance for National Institute of Magistracy and the National School for Clerks development“, with the purpose of setting up a network of new trainers. The EC Law training fields included also IP Law. The main topics related to IP Law consisted of the following:
 - Granting protection for a trademark;
 - The availability of the sign chosen as trademark;
 - The procedure of trademarks' cancellation;
 - Comparative analysis of the notorious, well-known and famous trademarks;

¹⁰ Mention should be made to the often participation of magistrates in training sessions organized by other institutions, outside NIM.

- National and Community regulations on copyright and related rights;
 - Moral rights of the copyright owner;
 - Theoretical and practical issues regarding national and international protection of copyright and related rights.
- ✓ An IP Law textbook was drawn up within the PHARE RO/02/IB/JH-10 Project, for the free use of future judges and prosecutors, as well as for those who attended the seminar, also available on the NIM website (<http://www.inm-lex.ro/index.php?MenuID=46&DetailID=67>).
- ✓ 2 seminars on IP Law are included in the 2006 NIM Training Strategy. The seminar will be attended by judges and prosecutors specialized in IP cases on the following topics:
 - New procedures regarding the protection of IP rights according to EU Enforcement 48/2004;
 - New procedures in the field of copyright and related rights according to Law no.8/1996 on copyright and related rights;
 - IP rights protections through measures taken at the national borders;
 - Industrial designs' protection;
 - Comparative elements in IP Law;
 - Competition rules in IP field;
 - IP crimes;
 - Protection through patents;
 - ECJ and WIPO jurisprudence;
 - Risk of confusion.
 - ✓ 6 seminars on EC Law, with 25 participants each, will be organised by the NIM in 2006. Certain topics of these seminars will be also focused on Intellectual and Industrial Property EC Law Regulations and Jurisprudence.
 - ✓ 8 seminars on topics including IP Law elements, for the selection of new trainers, with 15 participants each, will be organised in 2006 within PHARE 2004/016-772 01 04 Programme - „Continuing assistance for NIM and NCS development“.
 - ✓ 16 seminars, with 20 participants each, will be organized by the NIM in 2006, for training judges and prosecutors specialized in IPR cases.

The specific cooperation projects between Romania and WIPO in the field of training include:

- ✓ Two training programmes on IP Law that took place in 2004 and 2005. The programmes were organized in co-operation with WIPO, the European Patent Academy and the Swiss Federal Institute of Intellectual Property. 15 IP specialized judges were trained on theoretical and practical field of IP rights. The programmes focused on developing magistrates' ability to solve practical IPR cases, reinforcing cooperation among authorities with competences in IPR field and between authorities and representatives of private industries.
- ✓ In 2006 a programme was developed in cooperation with WIPO for the training of judges and prosecutors specialized in IP cases, as well as of customs and police officers in charge with IPR protection. The components of the programme comprise intensive training sustained by WIPO and developing the ability to solve practical IP cases. The practical component shall include case studies and meetings with representatives of national authorities with competences in the field of fight against counterfeiting and piracy. The programme is included in the 2006 NIM Training Strategy.
- ✓ In 2005, the first group of students graduated the specialized training course that was held at the recently founded IP Centre with the Faculty of Law in the University of Bucharest. The

Centre is a partner of WIPO and was founded as a part of the Governmental Agreement between Romania and WIPO.

The 2006 NIM initial training curriculum includes a module on IP Law, as well as 2 extracurricular projects in IPR field, although IP cases are not under the jurisdiction of courts of first instance.

The NIM included a one-semester module (16 hours) on IP Law in the initial training curriculum, starting with the 2003 – 2004 academic year.

Elements of IP Law are also included in the EU Law syllabus, as well as in 17 extracurricular projects for the NIM students, apart from the 16 hours dedicated exclusively to IP Law.

2. Police

- ✓ 75 fraud investigation police officers attended 6 seminars and professional training courses for managers and other specialists took place 2005;
- ✓ 6 police officers attended a seminar organized by the US Embassy in cooperation with the Prosecutors Office attached to High Court of Cassation and Justice;
- ✓ 4 police officers attended a seminar organized by the Romanian Association for Standardization;
- ✓ 56 police officers attended to training seminar organized by Business Software Alliance;
- ✓ 52 IP police officers attended an IP training the trainers course organized by the General Inspectorate of the Romanian Police;
- ✓ 70 police officers, prosecutors and judges will attend a TAIEX IP seminar;
- ✓ IP topics have been included in the curricula of the Centre for post graduate studies of the Ministry of Administration and Interior.

3. Customs

- ✓ The periodically specific training seminars held by the National Customs Authority for the regional appointed people were extended in 2005 through by organizing of 10 seminars for 194 customs officers.
- ✓ In October 2005, within Customs 2007 Program, representatives of the Service for Countering Counterfeit Goods exchanged visits with the Hungarian Customs and Finance Guard and Italian Guardia di Finanze on the enforcement of intellectual property rights in customs operations, in the framework of new European regulations in the field, Council Regulation (EC) no.1383/2003.

4. The State Office for Inventions and Trademarks Office (OSIM)

- ✓ The OSIM's experts had specialised training with the European Patent Office on various aspects as IPR enforcement, protection of biotechnological inventions, documentation techniques, IT training, etc.
- ✓ OSIM itself organised training sessions for other enforcement agencies, as those of August – September and November 2005 on EC trademark, industrial design.

5. The Romanian Copyright Office

ORDA's specialists have given lectures within the following programs:

- ✓ Training programs of the prosecutors organized by the Public Ministry;
- ✓ Training program for lawyers – for 50 persons;
- ✓ Training program for small and medium size enterprises – for 100 persons;

- ✓ Seminar on collective management of copyright organized by ORDA in cooperation with WIPO and TAIEX – 40 persons;
- ✓ Specialization courses organized within the Intellectual Property Centre – Faculty of Law, University of Bucharest –for 25 persons;
- ✓ 5 training sessions dedicated to Police and Gendarmerie representatives, to present new changes in competences - for 50 persons.

We could conclude with the assessment of the last peer review mission on IP: *The Team is extremely impressed with the solid training plans that have been adopted and the greater capacity being afforded to enforcement bodies. The training has been organised and delivered with a wide spectrum of national and international bodies from the public and private sectors and the Team are looking forward to even more developments under the new PHARE programme¹¹.*

6. Inter-institutional cooperation; information exchange

There can be no efficient enforcement of IPR without **appropriate cooperation** among the various institutions having competencies on IP matters. According to the Action Plan, and following the initiatives of the central structure of the Public Ministry and the Ministry of Justice, together with the other stakeholders, **a central working group was established to coordinate the national IP enforcement policy** comprising representatives of all the institutions involved. This proved essential for improving the IP enforcement in Romania, or as the last peer review reflected, *“the creation of a high level decision making group has been critical”*.

Regular meetings of the working group under the coordination of the GPO, according to the Action Plan are organised, where information on the risk and action zones are shared. Consultative reunions for drafting the proposals for amending the legal framework are also organised.

In addition, for efficiency reasons, the representatives of public and private sectors decided to create 3 sub-working groups on: counterfeiting, piracy and collecting agencies. The members of the working groups decided to have monthly meetings. The first such meeting took place on March 10, 2006.

In order to implement the measures provided by the Action Plan in this respect, collaboration **protocols** between ORDA and IGPR (Inspectorate General of Romanian Police), IGPF (Inspectorate General of Border Police) and ANV (National Customs Administration), with a view to ensuring effective implementation of legislation in the IPR field were revised.

Similarly, in addition to the protocols agreed with National Customs Authority and National Authority for Customers' Protection, in 2005 OSIM concluded cooperation protocols with the General Inspectorate of Border Police and the General Inspectorate of Romanian Police Force. The main aim is that OSIM provide data and information necessary to support the activities of the investigative and prosecuting authorities and those of the customs authorities in identifying the trade with counterfeited goods.

¹¹ See above, *Section 2*, for the brief presentation of this Phare project.

A national IPR data base of operative interest – the common database, will be created through a PHARE 2005 Program. The necessary equipment was recently purchased. This Phare project addresses important aspects such as: creation of an inter-institutional electronic database to facilitate the enforcement of IPR, specialized training for multidisciplinary teams, awareness campaigns in the IPR field. Until the setting up of this electronic data base, the specialized office within the GPO **set up a preliminary data base** to improve information exchange by making available to the institutions responsible with the enforcement all the necessary information for the strategic and operative activities and allow joint monitoring of ongoing investigations.

For an efficient **coordination** of the activities related to finding and prosecuting the offences in this field, the *specialized department of the Prosecutor's Office* monitors, on a monthly base, the complex causes investigated by the prosecutor's offices and the Police (currently, 73 complex causes are monitored, out of which 25 are related to brand counterfeiting, 45 to violations of copyright and connected rights and 3 to design and industrial models counterfeiting). The analysis on the solutions given for these causes by the prosecutors during the second semester of 2005 was transmitted to the territorial prosecutor's offices for ordering corrective measures.

Whereas the co-operation and exchange of information among the public agencies is well advanced, additional efforts are deployed **to strengthen the dialogue with the private industry**, which should feel part of the enforcement process. To this end, the representatives of the industry are invited to the meetings of the working group, are consulted upon legislative proposals and take part to the exchange of information. It is also acknowledged that the data they can provide, directly connected to practice, might critically improve the enforcement of IPR.

7. Effective enforcement

Examples of successful actions in the field of enforcement of IP rights and statistical data would be useful and illustrative for assessing the results of the capacity-building measures so far referred to.

An Operative Measures Plan on the fight against the counterfeiting and piracy was elaborated and implemented since August 2005 under the coordination of the Public Ministry. It allowed to the specialized institutions with prerogatives in this field (IGPR, IGPF, ANV, ORDA) to carry out various common activities to discover infringements of IPR.

In the above mentioned context, the General Inspectorate of the Romanian Police carried out together with the other specialized institutions, several targeted actions on:

- fight against the marketing of the pirated and counterfeited products;
- import, selling and use of the counterfeited devices decoders;
- illegal marketing of the counterfeited or illegally imported cigarettes and tobacco products;
- import of counterfeited products;
- seaside actions aimed at carrying out activities on a weekly basis for the protection of the copyright;
- in risk areas from certain counties and traders selling counterfeited products.

At the border points with Bulgaria, Moldova and Ukraine, joint team consisting of border police officers and custom officers have **identified and seized** important quantities of goods suspected of infringing an intellectual property right.

During the activities that took place since August 2005, 12 pirate labs for the purpose of producing phonograms, video grams and computer programs for commercial purposes were **identified** in 10 Romanian cities.

On those occasions a number of 14 IT systems, 24 CD-writers and DVD writers, 13 hard-disks, 70.229 CD's and DVD's, 3363 sleeves, blank CDs DVDs, CD's envelopes and 839 stickers were seized.

In 2005 the courts issued 9 custodial sentences (from 2 months to 2 years imprisonment) and 35 criminal fines.

In 2006 the prosecutors sent to trial 31 cases.

In the copyright and related fields, 26 sanctions for petty offences/contraventions were applied on a total value of 100,67 thousands RON and a number of 5,163 audio tapes, 71,506 CDs and DVDs, 13,912 covers, 19,332 cases, 50 devices being confiscated. 18 pirate laboratories for the purpose of producing phonograms, video grams and computer programs for commercial purposes were identified in various areas of the country.

In 2005 the police officers have seized counterfeited goods (clothes, footwear, electronics, cosmetics, sanitary products, alcoholic drinks, tobacco products, coffee etc.), on a total value of 1,284,551 EURO.

The courts prohibited the commercialization or import of certain products that bear the trademarks suspected of being counterfeited in 133 cases.

The enforcement of the *Government Emergency Ordinance no. 25/02.02.2006 on strengthening the administrative capacity of ORDA* led to the application of the procedures regarding the registering in four National Registers, namely the *Phonogram National Register* (49 certificates for economic agents, 207 certificates for phonogram register and for hologram delivery, 1,562,963 delivered holograms), the *Software Register* (75 register certificates of the economic agents, 311 registered software programs), the *Private National Copy Register* (2 register certificates), the *Video grams National Register* (474 audiovisual registered titles, 555,031 delivered holograms)

As a result of the intensification of the raids performed by the Police and other authorities with competence in IPR and related rights protection, ORDA performed a number of 146 technical-scientific findings/expertise regarding 32,435 products (audiocassette, CDs/DVDs/music/soft/film, hard discs, etc).

8. Awareness raising & sensitization of costumers

The importance of explaining the importance of the IPR enforcement is obvious and at the same moment tremendous. Realistically the reaction of authorities cannot match counterfeiting and piracy unless an appropriate supportive response from the public. That's why IP should be explained and brought as close to the heart of the people as possible. Romania experiences the beginning of an active approach.

To raise awareness on public in **October 2005**, REACT Romania organized a public destruction of 20 tones of counterfeited goods. The goods were seized as a result of the General Inspectorate of the Romanian Police, the General Inspectorate of the Border Police and Customs Authority cooperation.

In the same context, in **February 2006**, the Copyright Office, the General Inspectorate of the Romanian Police, the General Inspectorate of the Border Police and ROACT have organised another public destruction for a number of 70,000 video grams, phonograms and software counterfeited. The media, including the international agencies such as Reuters, France Presse, AP attended the event, largely presented in newspapers, radio and TV programmes, with the appropriate comments on the IPR' importance.

In February 2006, the State Office for Inventions and Trademarks (OSIM) organised the celebration of the centenary since the publication of the first Romanian Patent Law in the Romanian Official Journal. More than 1000 participants attended a series of events dedicated to the centenary, including high officials, representatives of the European and international organisations such as EPO, WIPO. The festivities were largely reflected in the media.

The anti-piracy measures provided by the latest legislative developments have been disseminated and explained so far in several large cities by the representatives of the Romanian Copyright Office (ORDA) with the support of the Chamber of Commerce and Industry of Romania.

A large awareness campaign was organised by each of the following institutions, separately, addressing a different public, but all related to the celebration of the *International Day of the Intellectual Property* for April the 26th 2006: the Romanian Copyright Office (ORDA), the State Office for Inventions and Trademarks (OSIM), the Chamber of Commerce and Industry as well as by the REACT- Romania – Romanian Association for Fight against Counterfeiting. The authorities responsible for enforcing the IPR, as well as the representatives of the private sector are involved and will take part to this event, which represents an important opportunity to raising public awareness on the matter of IPR.

To the same end, a 2005 Phare project to be started provides for **awareness raising through organization of public campaigns**. Its key issues focus on: health and security risks associated with the consumption and use of fake products, harms caused to right holders, association of counterfeiting and piracy with organised crime, loss of foreign investment.

9. Relevant legislative framework

It is acknowledged that the Romanian IP legislation is generally matching the EU and international standards. Last adjustments are being made in 2006, according to the Action Plan, to transpose the last pieces of the EU acquis, insofar at the date of accession to the European Union all acquis communautaire to be transposed.

This section only focuses on the latest amendments of the legal framework, especially relevant to the enforcement side.

Government Emergency Ordinance no. 190/2005¹² includes provisions to increase efficiency in prosecuting offences against IPR:

- IPR offences are *prosecuted ex officio and the possibility of amiable settlement of criminal litigation has been eliminated*;
- IPR offences are under the *jurisdiction of tribunals*;
- IPR offences are investigated by more *experienced prosecutors* at the level of county offices¹³ (minimum 4 years length of service);
- IPR offences related to *organized crime* are investigated by the specialized department within the Prosecutors' Office attached to the High Court of Cassation and Justice.

Law 344/2005 on certain measures for observing the IPR during the custom procedures¹⁴ increased the competences of custom authorities related to seizure of goods suspected to be the result of counterfeiting and/or piracy.

Law 337/2005 amending the Law no.16/1995 on the legal protection of topographies of semiconductor products¹⁵ transposes the Council Directive 87/54/EEC of 16 December 1986.

Government Emergency Ordinance 123/2005 on the modification and completion of Law no.8/1996¹⁶ include:

- the transposition of the Directive 2004/48 EC on the enforcement of intellectual property rights (in relation to copyright);
- the clarification of the transposition of art.5 of Resale Right Directive;
- the limits for the remuneration for the cable retransmission rights have been eliminated;
- a strict delimitation of the control competences between ORDA (Romanian Office for Copyright) and the Police; in order to avoid overlapping, ORDA's control competences were eliminated;
- elimination of the ORDA's consultative role;
- elimination of the unique collector from the rights collective management system
- elimination of the 1/3 proportion between copyright and related rights.

Government Emergency Ordinance 25/2006¹⁷ on strengthening the administrative capacity of ORDA stipulates that commercializing phonograms, video grams and IT software on street or in public is forbidden. This measure targets the audio, video and soft piracy, which is more difficult in authorised shops, whereas infringers are easier to spot.

10. Conclusion

Romania has achieved steady progress over the last years to meet international standards on the protection of intellectual property rights. The progress has increased exponentially the last two years, when not only the legislative framework was modernised but the authorities accentuated the more difficult side of implementation. And this improvement was made possible by the energy-costing process of raising awareness of the decision makers and public authorities.

¹² published in the O.J. no.1179/28.12.2005, presently in force; the Law for its approval is pending parliamentary debates.

¹³ See section 4.2 above.

¹⁴ published in the Official Journal no. 1093/05.12.2005

¹⁵ published in the Official Journal no. 1094/05.12.2005

¹⁶ published in the O.J. no. 843/19.09.2005); the Law for the approval of the Ordinance is pending parliamentary debates

¹⁷ published in the Official Journal no. 84/30.01.2006.

This should not go without saying that it is still a lot to be done further, for example for improving the co-operation with private industries on a modern, mutual trust basis or in improving the awareness of public over the gravity and medium-long time negative effects of counterfeiting and piracy.

However one should admit that a sound basis was already created – aware authorities, well endowed, organised in an efficient information-exchange and decision making group, exposed to intensive training, supported by modern legislation, swiftly to change according to the practice needs and international trends.

Independent, external evaluation reports come to confirm this.

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