

WIPO



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WORLD INTELLECTUAL PROPERTY ORGANIZATION
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ADVISORY COMMITTEE ON ENFORCEMENT

Fourth Session

Geneva, November 1 and 2, 2007

CONCLUSIONS BY THE CHAIR

Introduction

1. The fourth session of the Advisory Committee on Enforcement (ACE) was opened by Mr. Michael Keplinger, Deputy Director General, Copyright and Related Rights Sector, who welcomed the participants on behalf of the Director General.
2. The Committee unanimously elected, for one year, Dr. Hassan El-Badrawy, Assistant Minister of Justice for Parliamentary Affairs, Egypt, as Chair and Mr. Niels Holm Svendsen, Senior Legal Counsellor, Danish Patent and Trademark Office, Denmark, as Vice-Chair.
3. The Secretariat introduced document WIPO/ACE/4/4 dealing with the admission of two non-governmental organizations, namely the IPR Business Partnership and the Institute for Trade Standards and Sustainable Development (ITSSD), as *ad hoc* Observers to the ACE. The Committee dealt with the requests and they were admitted as *ad hoc* Observers.
4. The Draft Agenda (document WIPO/ACE/4/1) was adopted as proposed.
5. The Secretariat introduced document WIPO/ACE/4/2 on the activities of WIPO in the field of intellectual property enforcement and drew, *inter alia*, attention to the outcome of the Third Global Congress on Combating Counterfeiting and Piracy, hosted in Geneva in January 2007. The Secretariat also announced the release of a WIPO case book on enforcement, in French, and informed the Committee that the WIPO case book on enforcement for common law countries was currently being updated.

6. The Committee heard the presentations listed in the provisional program and made available by the Secretariat.

Conclusions by the Chair

7. Delegations expressed their appreciation of the ACE as a forum for the exchange of information between countries from the different regions in the field of IP enforcement, reiterating that its mandate excluded norm setting.

8. Among the specific issues that were dealt with in the presentations were, *inter alia*, the importance of cooperation and coordination especially among law enforcement agencies at the national, regional and international levels, and the need for right holder cooperation in a strategic approach to addressing this global concern; the global magnitude of counterfeiting and piracy activities, including the growing trade in infringing goods over the Internet; that counterfeiting in the area of medical products posed a threat to health and safety and undermined the credibility of health systems; the important role of the enforcement of intellectual property rights for socio-economic and cultural development and the creation of investor confidence. It was emphasized that, although many countries provide for presumptions and the admission of secondary evidence to assist the prosecution, systemic problems often hampered effective criminal enforcement and created backlogs. It was further pointed out that intellectual property crimes were often associated with other, often cross-border criminality. In that regard, it was pointed out that the application of the criminal system in general, including proceeds of crime and asset forfeiture legislation, rendered criminal IP enforcement more effective. Some delegations drew attention to their efforts in dealing with export and transshipment control in order to limit the fraudulent concealment of the origin of goods. The presentations further addressed the importance of information gathering and sharing in the effective enforcement of intellectual property rights.

9. In the discussions following the presentations a number of observations were made and questions were raised. Appreciation was expressed for the presentations which underscored that counterfeiting and piracy were a global concern and could only be addressed effectively in a strategic approach embracing all stakeholders, for both the public and private sectors and at the national, regional and international levels. Some delegations pointed to societal interests which should be considered in a holistic approach to the enforcement of intellectual property rights. Questions were raised as to the advisability of private prosecutions; the specialization of the judiciary in both criminal and civil proceedings; damage awards with a punitive notion; the proportionality of compensatory relief and criminal sanctions; the burden of proof and other evidentiary hurdles in legal proceedings; and the importance of maintaining a balance between the entitlement of right holders and the accessibility and affordability of goods and content from a consumer perspective. Delegations discussed the role of criminal IP enforcement as a complement to civil enforcement, and felt that an effective civil IP enforcement system reduced the reliance on criminal enforcement. It was suggested that means should be available to take action not only against infringers, but also against third parties whose services are used in the commission of the offense. Some delegations emphasized the particular role of governments in criminal IP enforcement in the interest of consumer protection.

10. The Committee took note of the considerable number of WIPO expert missions, training and study visits, seminars and workshops, as well as other activities mentioned in document WIPO/ACE/4/2. The Committee encouraged the efforts of WIPO and recommended that the Secretariat should continue these activities in cooperation with other organizations and the private sector.

11. As regards future work, a number of proposals were made and discussed. These proposals included, *inter alia*, bio-piracy; the contribution of right holders in enforcement; enforcement of rights, taking into account limitations and exceptions; piracy of traditional knowledge and genetic resources; coordination and cooperation related to IP crimes via the Internet; and private sector involvement in capacity building relating to intellectual property enforcement. Some delegations underscored their desire for broader consultation with regional groups to define topics to be discussed at forthcoming meetings. The member States of the European Communities suggested that the Secretariat prepare a structured document reflecting the previous meetings of the ACE. One delegation proposed that the work of the Committee now be framed by the relevant decisions adopted by the 2007 Assemblies of the Member States of WIPO on the Development Agenda, in particular recommendation No. 45.

12. Following informal consultations, the Committee could not agree on the topic to be considered in its fifth session. The Chair invited the Groups to further consult and provide the Secretariat with a proposal on the topic, as well as on the procedure to be applied for selecting future topics, by the end of February 2008. It was recommended that the Secretariat take into consideration suggestions made by Member States on the list of speakers.

13. The Committee adopted the Conclusions by the Chair, set out in paragraphs 7 to 12, above.

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