

## **Advisory Committee on Enforcement**

### **Ninth Session**

**Geneva, March 3 to 5, 2014**

#### SUMMARY BY THE CHAIR

*Adopted by the Committee*

1. The ninth session of the Advisory Committee on Enforcement (ACE) was held from March 3 to 5, 2014. The session was attended by 72 Member States and 18 Observers.
2. Mr. Francis Gurry, Director General of WIPO, welcomed the Committee and thanked all the Member States for their close engagement. He noted the exhibition being organized for the first time as part of the Committee, as another sign of the seriousness with which the Member States viewed the particular area of building respect for intellectual property (IP). The Director General introduced the work program items of the ninth session, namely, "Practices and operation of alternative dispute resolution (ADR) systems in IP areas" and "Preventive actions, measures or successful experiences to complement ongoing enforcement measures with a view to reducing the size of the market for pirated or counterfeited goods". He noted the role ADR could play in building respect for IP and in enforcement of IP, as court agendas got fuller, in particular bearing in mind that ADR provided access to specialist expertise. In relation to the item on preventive actions to complement operational enforcement, he noted that prevention was better than cure, acknowledging the various practices of Member States to be presented. Finally, the Director General emphasized the importance of the deliberations on the future work program of the Advisory Committee on Enforcement, recognizing that the Committee had evolved into a very rich forum for exchange and discussion in respect of building respect for IP and enforcement.
3. Under Agenda Item 2, Ambassador Thomas Fitschen, Deputy Permanent Representative, Permanent Mission of Germany, was elected as Chair; and Ms. Ekaterine Egutia, Deputy Chair of National Intellectual Property Center (SAKPATENTI) of Georgia, and Mr. Wojciech Piatkowski, First Counsellor, Permanent Mission of Poland were elected as Vice-Chairs. The Delegation of Kenya, on behalf of the African Group, agreed to the nomination of the Chair, but recalled that

Group B had in the past expressed preference for nominations of Chairs of WIPO Technical Committees to be made from the capital based experts.

4. The Chair thanked delegations for his election and recalled the mandate of the ACE as agreed by the WIPO General Assembly in 2002. The purpose of the ACE was not to set norms, but to exchange information on enforcement, including issues of coordination and technical assistance in the field of enforcement, as well as coordination with other organizations and the private sector to combat counterfeiting and piracy. The Committee had to look at public education, and to strive for more coordination in the field of training programs for all relevant stakeholders. When approaching enforcement issues, broader societal interests and development-oriented concerns were to be taken into account, as specified in Recommendation 45 of the WIPO Development Agenda. The Committee should work towards WIPO Strategic Goal VI, which cut across the entire spectrum of WIPO's work, and in which all countries, whether developed or developing, had a common interest. As state parties to the WIPO Convention and the various IP treaties, Member States had to strive for building respect for IP, and that meant for better compliance with the legal obligations they have signed up to. All States had to consider how they could implement a system of IP protection, in ways that responded to the practical needs of their societies and reflected the realities in the respective countries – this being a process, rather than a one-time event. The Chair emphasized that, as Member States and stakeholder groups endeavored to protect the creative and innovative fabrics of their societies through IP, the Committee could play a significant role in providing a forum to share experiences and lessons learned on how to enhance national capacities and to deal with the challenges. The Committee should also be the place for Member States to find ways to support each other and cooperate better, including with other stakeholders, such as the private sector. In view of the rich work program of the ninth session the Chair expressed the hope that the ACE might become a “market place of ideas”, where everyone would find at least one good idea to take home and reflect upon.

5. Under Agenda Item 3, the Committee approved the participation of the Center for Responsible Enterprise and Trade (CREATE.org) as an *ad hoc* observer to the ninth session of the ACE.

6. Under Agenda Item 4, the Committee adopted the Agenda (document WIPO/ACE/9/1) with amendments, as follows. Upon the proposal of the Delegation of Egypt, speaking on behalf of the Development Agenda Group (DAG), supported by the African Group, it was decided to include a new Agenda Item 9 which read “Contribution of the ACE to the implementation of the respective Development Agenda Recommendations”. As the following items consequently needed to be renumbered, Agenda Item 10 then read “Adoption of the Summary by the Chair”. Agenda Item 11 read “Closing of the session”.

7. The Delegation of Japan, on behalf of Group B, and the Delegation of the Czech Republic, on behalf of the Group of Central European and Baltic States (CEBS Group), stated that the inclusion of Agenda Item 9 should not constitute a precedent for the future.

8. Under Agenda Item 5, the Committee adopted the Summary by the Chair of the Eighth Session of the ACE (WIPO/ACE/8/12), with the amendment requested by the Delegation of Egypt, on behalf of the DAG, to elaborate on the proposals contained in Paragraph 33 by annexing the full proposals as initially submitted.

9. The Committee heard Opening Statements by Group B, the African Group, the Group of Central Asian, Caucasus and Eastern European Countries (CACEEC Group), the Group of Latin American and Caribbean Countries (GRULAC), the CEBS Group, the United States of America, Chile, the European Union (EU), Brazil, the DAG, and the Representative of the Third World Network (TWN).

10. The Delegation of Japan, on behalf of Group B, expressed confidence that the ninth session would contribute to the appropriate enhancement of enforcement practices, an essential element in the implementation of an effective, meaningful system of IP protection. IP enforcement being a topic of common interest irrespective of the level of development of the Member States, the Group looked forward to learning about other experiences with respect to the work program of the ninth session. Group B expressed support for the future work proposal submitted by Poland, United Kingdom and the United States of America on “The Specialization of the Judiciary and IP Courts”.

11. The Delegation of Kenya, on behalf of the African Group, recalled that the ACE was a forum of discussion and exchange of information on IP enforcement issues, in particular in relation to technical assistance and cooperation, and recalled Recommendation 45 of the WIPO Development Agenda. The Group called for the Committee to protect public and private interests, with discussions taking into account, with balanced information, the different levels of development and transfer of knowledge.

12. The Delegation of Belarus, speaking on behalf of the CACEEC Group, highlighted the importance the Group attached to the work of the ACE, which acted as a catalyst for efforts made by Member States in the region. The Group believed that the ACE allowed different countries to share best practices. The Group noted the exhibition taking place alongside the Committee as a very innovative step, and affirmed its readiness to participate constructively in discussing the future work of the ACE.

13. The Delegation of Uruguay, on behalf of GRULAC, emphasized the great importance of the work of the ACE for the region, stressing that the development of a balanced IP system encouraged the economic and social development of their countries. The Group highlighted the importance of the two work programs, one of which originated from a proposal by Peru. The Group expressed its commitment to actively engage in the meeting in dealing with the recent activities of WIPO in the area of building respect for IP and in the future work of the ACE.

14. The Delegation of the Czech Republic, on behalf of the CEBS Group, noted the importance of the Committee as a forum for exchanging information, experiences and best practices in the field of enforcement, and reiterated the Group’s strong commitment to fight counterfeiting and piracy at the national, regional, and international levels. The Group stated that it firmly believed that a better understanding of the enforcement practices of individual countries, such as ADR, preventive measures, the economic and social impact of the IP infringement, could enable Member States to develop and improve their appropriate and effective enforcement mechanisms that formed an integral part of any efficient IP system. As regards to the future work, the Group expressed its continued support to the Committee’s activities concerning the development of better information and statistics about the scope, scale and impact of counterfeiting and piracy, the improvement of administrative cooperation and information exchange across borders, the improvement of best practices in enforcement, raising public awareness of the growing risks of counterfeit and sub-standard products to health and safety, and the engagement of various stakeholders such as businesses in the enforcement practice. The Group welcomed several of the proposals on the table vis-à-vis the future work, expressing support to the proposal of Group B on awareness-building activities and the proposal by Poland, the United Kingdom and the United States of America on “The Specialization of the Judiciary and IP Courts”. The Group also recognized the importance of efficient technical assistance in the area of enforcement.

15. The Delegation of the United States of America recognized the importance of reinforcing cooperation among authorities and relevant organizations in the field of enforcement and supported WIPO’s efforts to coordinate and enhance the enforcement aspects of its technical assistance work. The Delegation expressed full commitment to work closely with WIPO and Member States in shared commitment to assist all countries in improving their enforcement of IP

rights. As for the future work, the Delegation recalled the proposal it had tabled with Poland and the United Kingdom, to study “The Specialization of the Judiciary and IP Courts”, annexed to document WIPO/ACE/9/28.

16. The Delegation of Chile expressed support for the statement made by the Delegation of Uruguay on behalf of GRULAC. The Delegation pointed to the importance of ADR in IP areas, noting that in Chile ADR was widely used in different IP disputes. Since December 1, 2013, Chile had a center for the resolution of .cl domain name disputes with an arbitration system. In addition, the Delegation highlighted two national examples that effectively helped reduce the market for counterfeit or pirated goods. First, the National Customs Service had implemented a methodology that allowed, by analyzing the specific risks of each region of the State, for a more forceful administration of border measures. Second, within the Chilean Investigative Police an Investigative Brigade for IP Crimes (BRIDEPI) had been operating since 2008.

17. The Delegation of the European Union, speaking on behalf of the EU and its Member States, recognized that both EU and national policies concerning IP enforcement had to be outward looking, in an increasingly interconnected global economy. The Delegation affirmed the EU's support for the ACE as a forum allowing interaction with international trading partners to discuss how respective IP enforcement policies could link together more efficiently and effectively.

18. The Delegation of Brazil recalled the guidelines applicable to the work of the ACE, in particular Strategic Goal VI, to promote International Cooperation on Building Respect for IP. It recalled the outcome indicators defined in the Medium Term Strategic Plan for WIPO, 2010 - 2015, particularly, “balanced policy dialogue within the auspices of the ACE, taking into account development-oriented concerns”. The Delegation noted that the strategy for societies to increase respect for IP should include education about all the aspects of the subject, including the existing flexibilities, as well as public measures that were in line with the socio-economic realities of each country. The Delegation noted that WIPO, as a specialized UN agency, had all the credentials and the legitimacy to lead the work towards the achievement of this goal. The Delegation emphasized the role of WIPO in providing broad and balanced technical assistance to the Member States for their enforcement activities, bearing in mind the specificities of each country, as well as the need to align these activities with the Recommendations of the Development Agenda. As for the future work, the Delegation supported the proposal of the DAG to promote discussions on how to intensify and improve WIPO's enforcement-related technical assistance.

19. The Delegation of Egypt, on behalf of the DAG, recalled the relevance of the Recommendations of the Development Agenda and Article 7 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).

20. The Delegation of Colombia expressed support for having studies and exchanging information that would help to improve protection of IP. The Delegation welcomed the approach to study corporate social responsibility models, and to involve enterprises. The Delegation noted its support for the future work proposal submitted by Poland, the United Kingdom, and the United States of America on “The Specialization of the Judiciary and IP Courts”, and expressed interest to share the related national experience of Colombia with the Committee.

21. The Representative of the Third World Network (TWN) stated that it was critical that WIPO's activities in the area of IP enforcement did not affect the enjoyment of human rights to food, health, education and science and culture. The Representative recalled the development-oriented approach to IP, reflected in Development Agenda Recommendation 45. The Representative stated that a maximalist approach to IP enforcement hampered the technological catch-up process of developing countries as well as legitimate business, and that developing countries should be allowed to use the flexibilities effectively and efficiently, and that the ACE should initiate related

discussions. The Representative expressed concerns on the promotion of public private partnership in relation to IP enforcement, and the collaborations with agencies that promote maximalist IP enforcement policies. The Representative urged the Secretariat to follow an evidence-based approach in carrying out the activities on IP enforcement, and called for more transparency and accountability in Secretariat activities with regard to IP enforcement.

22. Under Agenda Item 6, the Committee heard 22 expert presentations relating to the various items of the work program (working documents WIPO/ACE/9/3 to WIPO/ACE/9/27). The Committee valued the quality and balanced approaches of the working documents, and the presentations.

23. In relation to the work program item on “Practices and Operation of ADR in IP Areas”, Mr. Trevor Cook, Attorney-at-Law commissioned by the Secretariat to prepare the background paper on ADR as a tool for IP enforcement, presented his paper which covered: types of ADR procedures that may be used for IP enforcement; legal and regulatory frameworks for ADR, in the context of IP enforcement; benefits and limitations of ADR as an IP enforcement tool; and the current use of ADR for IP enforcement. This was followed by the Secretariat’s presentation of the activities of the WIPO Arbitration and Mediation Center, covering its caseload under the WIPO Mediation, Arbitration, Expedited Arbitration and Expert Determination Rules; and domain name dispute resolution.

24. Discussions followed with interventions from the Delegations of Georgia, Philippines, Brazil, Burkina Faso, Germany, the European Union, Sri Lanka and the Representative of Knowledge Ecology International (KEI).

25. Five presentations on national experiences followed. The Department of Intellectual Property Rights, Ministry of Commerce of Cambodia, presented its Preliminary Alternative Dispute Resolution (PADR) and the “recommendation service” provided in IP cases before the courts. The National Copyrights Institute (INDAUTOR) of Mexico presented the diverse ADR mechanisms offered by the Institute, including administrative settlement procedure, conciliation, mediation and arbitration, indicating that between 1998 and 2013, around 24,386 settlement conferences were convened. The Korean Intellectual Property Office (KIPO) presented the work of the Industrial Property Right Dispute Mediation Committee (IPRDMC) established under KIPO and its plans to invigorate this body. The Deputy Directorate General for Intellectual Property, Ministry of Education, Culture and Sports in Spain set out the extra-judicial copyright and related rights dispute resolutions systems in Spain, explaining the applicable powers, composition, practice, and possible options for the future. Professors Barton and Cooper, California Western School of Law, United States of America, presented their report prepared for the United States Patent & Trademark Office, offering descriptions of some of the ADR methods available for domestic or international IP disputes. Finally, Dr. Michael Groß, the Fraunhofer Gesellschaft, Germany and Ms. Sabine Fehringer, Attorney-at-Law, Austria, shared industry perspectives on the use of ADR in IP cases, particularly in relation to universities and research institutions.

26. Discussions followed with interventions from the Delegations of Germany, Burkina Faso, Japan, Pakistan, Philippines, Indonesia, and the European Union.

27. In relation to the work program item on “Preventive actions, measures or successful experiences to complement ongoing enforcement measures with a view to reducing the size of the market for pirated or counterfeited goods”, the Secretariat introduced its activities in awareness raising to build respect for IP.

28. Under the sub-item of “Awareness Raising”, four national and one regional experiences were shared. The National Registry of Costa Rica presented its national project to “Establish a Culture

of Respect for IP”; the Industrial Property Office of the Slovak Republic presented its pilot project for raising public awareness on IP and its enforcement, entitled “IP Awareness – IP Education – IP Enforcement”; the Intellectual Property Office of Trinidad and Tobago shared its national project on building respect for IP; the Companies and Intellectual Property Commission (CIPC) of South Africa introduced its “Be your Own Buy your Own (BYO<sup>2</sup>)” anti-piracy campaign; and the Intellectual Property and Competitiveness Department of the League of Arab States shared its efforts to combat piracy, counterfeiting and commercial fraud, showcasing animated cartoons which displayed with humor the importance of IP rights.

29. Discussions followed with interventions from the Delegations of El Salvador, Japan, Jamaica, Kenya, Brazil, the United Kingdom, Ghana, Germany, Sri Lanka, Burkina Faso, Jordan, Indonesia, Nepal and the representatives of KEI and the International Video Federation (IVF).

30. Under the sub-item “New Business Models”, the National Institute for the Defense of Competition and Intellectual Property Protection (INDECOPI) of Peru reported on the campaigns of the Copyright Directorate, comprising an activity to promote the legal use of software by small and medium-sized enterprises (SMEs), an anti-piracy crusade undertaken with the private audiovisual sector, a “Buy Legal, Buy Original” campaign, a campaign to reduce illegal use of broadcast signals and audiovisual products and works, a campaign to promote the legal use of music and movies in overland transportation services, and educational projects. Fundacja Legalna Kultura, from Poland, explained the results of a social campaign, “Legal Culture” (“Legalna Kultura” in Polish), aiming to build awareness in the field of IP protection. The European Observatory on Infringements of Intellectual Property Rights provided a report on the different business models conceived by the industry to offer, through online technologies, various types of copyright content.

31. Discussion followed with interventions from the Delegations of Egypt, Germany, Pakistan, and Chile.

32. Under the sub-item “Supply Chain Security”, the European Commission explained its initiatives to incentivize the development of pro-active and inclusive voluntary agreements between stakeholders to prevent the development and spread of commercial scale IP infringing activities, highlighting upstream and downstream “due diligence” initiatives, which included the use of memoranda of understanding between rights holders and distribution and payment service providers, and the diffusion of supply chain auditing, respectively.

33. Discussion followed with interventions from the Delegations of South Africa, the United States of America, and the Representatives of CREATE.org and the International Trademark Association (INTA).

34. Under the sub-item “Preventive Measures in the Online Environment”, three national experiences and two industry experiences were shared. The Ministry of Culture of the Russian Federation introduced the procedure under the “Amendments to Certain Legislative Acts of the Russian Federation Concerning the Protection of Intellectual Rights in Information and Telecommunication Networks and the Draft Federal Act on Amendments to Certain Legislative Acts of the Russian Federation in order to Stop Violations of Copyright and Related Rights in the Information and Telecommunication Networks”. The Motion Picture Association (MPA) of the United States of America described the formation and work of two voluntary mechanisms: (i) the Copyright Alert System and its Oversight Body – the Center for Copyright Information in the United States of America and (ii) Operation Creative in the United Kingdom. The Intellectual Property Office of the United Kingdom introduced the efforts made to tackle IP infringement online, including legislative frameworks, interventions, understanding consumer behavior, industry initiatives, education, and technological challenge. The Deputy Directorate General for Intellectual Property, Ministry of Education, Culture and Sports of Spain explained the administrative and judicial

procedure for infringements of copyright and related rights committed by providers of information society services which became operational in March 2012. The Alibaba Group of China presented its IP protection practices under its Internet platform-based business model, comprising *inter alia*, an online IP protection and complaint system, the development of an appropriate platform policy, proactive anti-counterfeit measures, working with different partners and taking multiple approaches to IP protection cooperation, an offline anti-counterfeit operation at the source, and positive guidance in IP protection, and shared related difficulties and challenges.

35. Discussions followed with interventions from the Delegations of Burkina Faso, South Africa, the United States of America, Germany, Egypt, Spain, the Philippines, and Belgium.

36. Under Agenda Item 7, the Secretariat introduced document WIPO/ACE/9/2 on recent activities of WIPO in the field of building respect for IP, guided by the 2012-2013 Program and Budget, Development Agenda Recommendation 45, and WIPO Strategic Goal VI "International Cooperation on Building Respect for IP". The document set out technical assistance in the field of building respect for IP. Requested services included legislative assistance, as well as training and awareness raising for law enforcement officials and the judiciary. The document also included activities aimed at further enhancing systematic and effective international cooperation with other international organizations, non-governmental organizations (NGOs), and the private sector, in order to ensure a balanced and transparent approach. Program 17 also contributed to numerous WIPO publications on the latest developments in the area of building respect for IP. The Secretariat noted that the description of each activity was accompanied by information about the venue, any partnering organizations, participating countries, a brief summary of the objectives of the activity, and a web link to the full program. The Committee took note of the information contained in the document.

37. The Delegation of Brazil recognized the importance of WIPO's activities in building respect for IP and noted that it would be useful if more information on each activity supported by WIPO were available for consultation on the WIPO website. Information on presentations made and materials used in WIPO activities could serve as inspiration to Member States and the civil society for further projects in the same field and would be of great value to raise awareness of building respect for IP and the protection of IP rights.

38. The Delegation of El Salvador reported on a regional seminar on the promotion of respect for IP in Latin America held in San Jose in 2013 which was extremely productive. The Delegation highlighted that the way in which Government officials were prepared in advance of the seminar was very beneficial and that the seminar contents had a high academic and technical level. This stressed the importance of continuing to work on the challenges facing enforcement bodies.

39. The Representative of TWN noted that it still remained unclear whether or not the content of WIPO's activities were appropriate in adequately addressing flexibilities and giving development concerns due weight. It therefore called for an independent review of WIPO's work on IP enforcement to be undertaken urgently to assess the orientation of these enforcement activities and examine whether the essence of Recommendation 45 of the Development Agenda was mainstreamed in WIPO's enforcement-related activities. The Representative also called for more transparency in WIPO's activities on enforcement and urged WIPO to immediately make available on its website further details of activities on enforcement, including presentations, background papers and other resource materials. Finally, the Representative cautioned against WIPO's partnership with international organizations and private sector associations pursuing a TRIPS-plus enforcement agenda as such partnerships went against the spirit of Development Agenda Recommendation 45 and proposed that it be independently assessed how each of the partners approached IP enforcement and whether their approach was appropriate from the perspective of development and Development Agenda Recommendation 45.

40. The Delegation of Georgia appreciated the activities that WIPO undertook with interested parties mainly in the public sector of various WIPO Member States to build respect for IP. It suggested that in the future, such activities could also be more targeted to other key players from the private sector, civil society and the media.
41. The Delegation of Chile emphasized that WIPO's assistance to Member States through legislative advice, training, awareness raising, and international cooperation and coordination complemented the work of the Committee, helped implement Development Agenda Recommendation 45 and should therefore be continued, in particular in Latin America, where further progress in building respect for IP could be made.
42. The Delegation of Nepal inquired how least developed countries could reap benefits from an enhanced protection and enforcement of IP.
43. The Secretariat noted that the particular form of assistance provided to least developed countries was determined in close cooperation with the country concerned as well as, within WIPO, the Regional Bureaus and the Division for Least Developed Countries, so that such assistance responded to specific needs of the particular country. The Secretariat also announced that WIPO's Internal Audit and Oversight Division had started an evaluation of WIPO's activities in the area of Building Respect for IP which would contain an independent evaluation of the technical assistance activities carried out in this area.
44. Under Agenda Item 8, after due consideration, the Committee agreed to continue to consider, at its tenth session, the following topics: "Practices and operation of alternative dispute resolution systems in IP areas" and "Preventive actions, measures or successful experiences to complement ongoing enforcement measures with a view to reducing the size of the market for counterfeited or pirated goods."
45. The Committee also agreed that the proposals in relation to "A review of awareness-building activities as a means of building respect for IP rights, especially among school-age children and students" (set out in Annex I), "A discussion on how to intensify and improve WIPO's enforcement-related technical assistance" (set out in Annex II), and "The Specialization of the Judiciary and Intellectual Property Courts" (set out in the Annex of document ACE/9/28) would remain on the table for future consideration.
46. The Delegation of Jordan proposed to undertake, in cooperation with the League of Arab States and WIPO, a project aimed to assess the impact that communication tools, such as the animated cartoons shown by the League of Arab States under the sub-item "Awareness Raising" of Agenda Item 6, had on consumer attitudes. The results of such a pilot project could then be shared with interested Member States. The Delegation of Mexico proposed to provide the results of a study undertaken by the American Chamber of Commerce of Mexico in relation to consumer reactions to non-punitive measures and indicated that it was also conducting a study on measures to strengthen IP compliance throughout supply chains, the results of which it would be glad to share with the Committee.
47. Under Agenda Item 9, the Chair invited views by delegations on the contribution of the ACE to the implementation of the respective Development Agenda Recommendations.
48. The Delegation of Egypt, speaking on behalf of the DAG, believed that Development Agenda Recommendation 45, as well as other relevant Recommendations, for example on capacity building and technical assistance, were directly related to the competences of the ACE. It thanked the Secretariat and the presenters for the useful experiences, both on preventive actions to reduce the market for counterfeit or pirated goods, and on alternative dispute resolution mechanisms,



shared during the ninth session of the ACE. The DAG believed that these activities represented a positive contribution to enriching the debate on how to build respect for IP. Nonetheless, the DAG believed that the ACE would still have to enlarge the scope of the discussions to make them consistent with the objective of building respect for IP, which was a much broader and inclusive concept than sheer IP enforcement. Policies and activities developed on the basis of this concept not only benefited from a greater degree of legitimacy but were also more likely to be effective, as they were based on a deeper understanding of the underlying causes of IP infringements. The DAG believed that it was in this light that the experiences brought to the ACE should be analyzed. Despite some progress made by WIPO in general, and the ACE in particular, the DAG believed that there was still a long way to fully implement the Development Agenda. The DAG members recognized that it was a work in progress and as such entailed a change of paradigm in the organizational activities, so that it could fulfil the mandate agreed upon by the Member States. Finally, the DAG hoped the activities to be set for the tenth session would contribute to improve the work of ACE in this direction, always having the Development Agenda Recommendations as a guideline, and the final goal of establishing a balanced agenda that addressed the interests of all Member States.

49. The Delegation of South Africa, speaking on behalf of the African Group, stated that the adoption of the Development Agenda Recommendations in 2007 had been a watershed moment in the organization and had sent a clear message that the organization was embracing development. Subsequent to that, the General Assembly of WIPO had adopted the Coordination Mechanism three years later. The 2010 WIPO General Assembly had approved this mechanism with a view that all relevant WIPO bodies should report on their contribution towards the implementation of the Development Agenda Recommendations. The Delegation emphasized that over and above its purpose of enabling the reporting to the General Assembly on the mainstreaming of the Development Agenda, the Coordination Mechanism was also meant to provide an opportunity to Member States to scrutinize cross-cutting issues and activities in the organization. In this regard, time had come that an agreement was reached on a standing agenda item on the contribution of the ACE to the implementation of the relevant Development Agenda Recommendations. As already stated at the 2012 General Assembly, the Delegation remained committed to the mainstreaming of the Development Agenda in all of WIPO's work. It was pleasing to see that the activities conducted by the ACE were primarily premised on Development Agenda Recommendation 45. Taking note of document WIPO/ACE/9/2, the Delegation was of the view that, over and above other sources or activities, it provided a good basis for assessing the contribution of the Committee to implementing the Development Agenda. However, there was a need for more detailed information on the activities undertaken by the Secretariat. On the issues pertaining to international coordination and cooperation, the Delegation noted the importance of WIPO's engagement with other intergovernmental organizations, international organizations, and other relevant stakeholders in the field of IP. In this area of WIPO's work, more detailed information was also needed. In conclusion, the Delegation reiterated the need for a balanced approach between enforcement and development in the work undertaken by the Committee in line with Recommendation 45 of the Development Agenda.

50. The Delegation of the Czech Republic, speaking on behalf of the CEBS Group, noted that mutual trust and confidence in the positive impact of an efficient IP system on development could be built through the contributions of Member States and through discussions within the ACE. The CEBS Group emphasized that enforcement measures aimed at combating counterfeiting and piracy helped to create a predictable environment for investment which in turn promoted economic and social development, as was also stressed by the 2013-2014 Global Competitiveness Report: "The quality of institutions has a strong bearing on competitiveness and growth. It influences investment decisions and the organization of production and plays a key role in the ways in which societies distribute the benefits and bear the costs of development strategies and policies. For example, owners of land, corporate shares, or intellectual property are unwilling to invest in the

improvement and upkeep of their property if their rights as owners are not protected". A contribution to the Development Agenda Recommendations, in particular to Development Agenda Recommendation 45, was therefore intrinsic to enforcement. The CEBS Group also noted that the ACE was an excellent platform for all Member States to see the practices of others and build upon these experiences when establishing or improving their own legislative frameworks on issues related to enforcement. The CEBS Group comprised countries with different levels of development and per capita income. Despite this, or rather thanks to this, it was able to agree on the principle that the work of WIPO on enforcement was a valid contribution to economic and social welfare and numerous aspects of transfer of technology. The States of the CEBS Group were building upon experience shared by other members and by the Secretariat, and were reflecting upon this knowledge in their national projects and strategies; they relied on the ideas and practices presented by delegations during the past and present sessions of ACE. The CEBS Group believed that these dynamics should not be lost in future sessions. The States of the CEBS Group were also sharing their experience. For example, during the last session, great focus had been dedicated to awareness raising through public education, specialisation of IP courts through training programs and improvement of technical assistance, and a number of these elements had formed part of presentations delivered by its members to the ACE. Furthermore, in the course of the ninth session of the ACE, several presentations had contributed to sharing experience and knowledge regarding awareness building. In order for the ACE to be able to treat development issues with even greater efficiency, the CEBS Group encouraged higher numbers of Members facing such challenges to share their specific experience and problems they faced when putting in practice their enforcement policies. In this regard, the CEBS Group thanked the Delegation of South Africa for its presentation and document WIPO/ACE/9/18, where, among other valuable elements, it pointed out the importance of IPR for any country's social, economic and cultural development. This was done in the context of awareness raising, one of the topics of the ACE, and the CEBS Group could not but subscribe to this notion.

51. The Delegation of Japan, speaking on behalf of Group B, believed that the core mandate of the ACE, namely, the exchange of experiences on the enforcement of IP rights, contributed to the Development Agenda, in particular, Recommendation 45. In many of Group B's own national experiences, it had found that international investors were attracted to markets where they saw stable business environments that were supported by the transparent, predictable, and effective rule of law. Whether or not effective IPR enforcement efforts were being practiced in a country was increasingly becoming a factor in the decision-making of investors when they examined which markets to enter, as well as from which markets to withdraw. Group B believed that an increase in investment in an economy not only promoted economic development, but also created the prerequisite platform for the promotion of technological innovation and the transfer and dissemination of technology. In this regard, the productive and active exchange of experiences on the two enforcement-related issues at the ninth session of the ACE had contributed to the implementation of the Development Agenda, especially Recommendation 45. The sharing of national experiences on a range of practices, including awareness raising, new business models, and alternative dispute resolution in IP areas, had certainly improved the understanding of delegations of the various paradigms being utilized around the world, and this would contribute to the respective and collective ideas of the members of the ACE as to how to proceed in this area. Group B believed that the Development Agenda could continue to be implemented in a positive way as relating to enforcement.

52. The Delegation of the EU, speaking on behalf of the EU and its Member States, stated that discussions on IP were by their nature an exercise in balancing the interests of right holders and the benefit of society at large. This balance should be reflected in the enforcement strategies of each WIPO Member State and in full respect of IP conventions. The ACE mandate provided a forum for the exchange of views regarding these practices and played a key role in helping Member States inform their strategies according to their national needs. During the ninth session

of the ACE, Member States had seen numerous presentations by countries that successfully utilized WIPO technical assistance and best practices discussed during previous sessions to improve and enhance their enforcement policies. The Delegation of the EU therefore saw the ACE as already contributing significantly to the implementation of the Development Agenda, especially Recommendation 45 and remained committed to continuing its active participation in this exchange of information with a view to moving the work of this important Committee forward.

53. The Secretariat will forward the views set out in paragraphs 48 and 52, above, to the 2014 WIPO General Assembly.

*54. The Committee is invited to adopt the Summary by the Chair, set out in paragraphs 1-53, above.*

[Annexes follow]

## **Proposal by Group B:**

### **A Review of Awareness-Building Activities as a Means of Building Respect for Intellectual Property Rights, Especially among School-Age Children and Students**

(Proposal initially submitted for future work discussion during the eighth session of the ACE, WIPO/ACE/8/3 REV. ANNEX IV)

1. With regard to developing a work program for the tenth session of the Advisory Committee on Enforcement (ACE), Group B sees a benefit to returning to a theme that was first suggested by the Secretariat at the First Session of the ACE (Paragraph 13 of document WIPO/ACE/1/1): “education and awareness-building activities.” The issue of education and awareness building was adopted as the theme for the third session in 2005 (Paragraph 21 of document WIPO/ACE/2/13), and among the conclusions adopted was stressing the importance of continued education and awareness raising. (Paragraph 11 of document WIPO/ACE/4/2).
2. At the thirty-second session of the WIPO General Assembly, Member States unanimously expressed their appreciation of the choice of this theme for the Third Session of the ACE, and encouraged the Committee to continue its work. (Paragraph 2 of document WIPO/ACE/3/2; Document WO/GA/32/13). Accordingly, we believe it is timely for us to re-visit this theme.
3. As noted in responses from Member States and Organizations collected by the International Bureau, to a survey proposed at the first session of the Advisory Committee on the Enforcement of Industrial Property Rights (Paragraph 1 of document WIPO/ACE/1/4/Annex): “a perceptible heightening of awareness among the general public and government agencies as to the importance of adequate intellectual property rights protection for the economic development and well-being of the country” is crucial “to achieve results in the fight against counterfeiting and piracy.” In this respect, intellectual property education and awareness programs can serve to educate and inform the public about the benefits that a strong intellectual property system can have for their economy. (Paragraph 23 of document WIPO/ACE/1/4/ Annex). The survey further noted that: “[t]o achieve this goal, Member States could work with private sector partners to create outreach enforcement programs, involving the media and using the Internet, street presentations, and the like.” (Paragraph 25 of document WIPO/ACE/1/4 Annex).
4. One area in particular that is likely to reap benefits in the short and long term is awareness raising among school-age children and students of the importance of intellectual property in achieving developmental goals and the harm – economic and health and safety – to societies that counterfeiting and piracy can pose. Accordingly, we propose that the International Bureau undertake a study that identifies the existing initiatives targeted at school-age students, and present said study at the tenth session of the ACE.
5. Moreover, we recognize that Member States have continued to work in this field of awareness raising, and we believe it would be valuable to have an interchange regarding such efforts for the tenth session of the ACE, which could complement the findings of the study.

[Annex II follows]

## **Proposal by the Development Agenda Group**

(Proposal initially submitted for future work discussion during the sixth session of the ACE, WIPO/ACE/6/11, paragraph 11)

A discussion on how to intensify and improve WIPO's enforcement-related technical assistance, including:

- (i) an evaluation of how WIPO has been promoting the concept of "building respect for IP" in its technical and legislative assistance activities;
- (ii) an inventory of "success stories" of technical assistance and capacity building in this area;
- (iii) legislative assistance with a view to preventing the abuse of enforcement procedures such as "sham litigation"; and
- (iv) legislative assistance in drafting national laws of enforcement that take into account the use of flexibilities as well as the different socio-economic realities and the differences in the legal tradition of each country.

[End of Annex II and of document]