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MATTERS CONCERNING THE STATUS
OF THE ADVISORY COMMITTEE(S) ON ENFORCEMENT

Document prepared by the Secretariat

I. BACKGROUND

1. The Program and Budget for the 1998 - 1999 biennium,¹ approved by the Thirty -second Series of Meetings of the Assemblies of Member States of WIPO in 1997, provided for the establishment of the Advisory Committee on Protection of Industrial Property Rights in Global Electronic Commerce (ACP/IP, Sub-program 09.3) and the Advisory Committee on Management of Copyright and Related Rights in Global Information Networks (ACMC, Sub-program 10.5).

2. In the Program and Budget for the 2000 - 2001 biennium, the ACP/IP was renamed Advisory Committee on Enforcement of Industrial Property Rights (ACE/IP) and provision was made to include enforcement issues in the mandate of the ACMC, which became the Advisory Committee on Management and Enforcement of Copyright and Related Rights in Global Information Networks (ACMEC). At the First Session of the ACE/IP, held in Geneva on October 19 and 20, 2000, the Committee adopted a Summary by the Chair,² which recommended that it meet jointly with the ACMEC, once in 2001, to discuss the enforcement of all intellectual property rights.

¹ Documents A/32/2, WO/BC/18/2, paragraphs 91 to 93, and 101 to 103

² Document ACE/IP/1/3

3. The Joint Meeting of the ACE/IP (Second Session) and of the ACMEC (Third Session)³ took place in Geneva from December 18 to 20, 2001. The Joint Meeting identified and considered a number of issues to be addressed by the Committees⁴ and decided to recommend to the WIPO Assemblies that a Committee or Committees be established to continue discussing issues related to the enforcement of intellectual property rights.

4. The Program and Budget for the 2002 - 2003 biennium,⁵ under Sub-program 10.4 (Intellectual Property Enforcement Issues and Strategies) as approved by the Assemblies of Member States of WIPO in September 2001, recalled the approach initiated in the previous biennium. However, a budgetary allocation is provided under this Sub-program to undertake certain activities for the purpose of executing the responsibilities of the Advisory Committee on Enforcement of Industrial Property Rights in the broader context of all intellectual property rights.

II. PROPOSAL FOR THE ESTABLISHMENT OF THE ADVISORY COMMITTEE(S) ON ENFORCEMENT

A. Structure

5. Following the discussions and recommendations of Member States and observers⁶ participating in the Joint Meeting of the ACE/IP and ACMEC in December 2001, and subsequent consultations with Member States, the Member States might wish to consider the following option with regard to the structure of the Advisory Committee(s) on Enforcement:

(a) to establish a single Committee covering both industrial property rights and copyright and related rights;

(b) to establish two separate Committees, one for industrial property rights and one for copyright and related rights, which would meet concurrently with a possible joint session at the end; or

(c) to establish two separate Committees.

6. In view of the cross-cutting nature of enforcement issues, common to all intellectual property rights, a single Committee would seem the most appropriate. However, certain enforcement issues might arise in the future which would justify a more in-depth discussion by experts in specialized areas of intellectual property rights. To achieve this, it is suggested

³ The two prior sessions of the ACMEC, on December 14 and 15, 1998, and on December 8 and 9, 1999, respectively, were informal. The deliberations and/or conclusions of the ACMEC were not recorded in a Summary by the Chair or a formal Report; however, the documents for these sessions are available on the WIPO Website at <http://www.wipo.int> upon request.

⁴ See document ACE/IP-ACMEC/3, Summary by the Chair.

⁵ Documents A/36/2 and WO/PBC/4/2

⁶ Intergovernmental and non-governmental organizations — see Annex 2 of document ACE/IP-ACMEC/2.

that the Committee be flexible to structure its agenda items to accommodate such needs or, alternatively, that specialized working groups be established thereunder.⁷

B. Objective

7. The Committee(s) would constitute a forum in which discussions on enforcement issues could take place among Member States. In particular, the Committee(s) would continue and further develop the work carried out by the previous Advisory Committees, as well as the Consultation Meetings scheduled to take place in September 2002, with special focus on: coordinating with certain organizations and the private sector to combat counterfeiting and piracy activities; public education; assistance; coordination of undertaken national and regional training programs for all relevant stakeholders and exchange of information on enforcement issues through the establishment of an Electronic Forum.

C. Organizational and procedural arrangements

8. *Rules of Procedure.* At its first session, the ACE/IP adopted the same rules of procedure adopted for WIPO bodies, namely the "WIPO General Rules of Procedure" (Publication No. 399 (FE) Rev. 3). In addition, the ACE/IP exercised the option⁸ to adopt two special rules of procedure which were: firstly, that membership in the ACE/IP be extended to Member States of the Paris Union that were not Member States of WIPO, and that observer status be extended to Member States of the United Nations that were not Member States of WIPO or the Paris Union and, secondly, that the Chair and the two Vice-Chairs should serve a term of one year and would immediately be eligible for re-election to the offices that they had held at the expiration of that term.⁹

9. The Joint Meeting of the ACE/IP and ACMEC noted that Rule 42 of the WIPO General Rules of Procedure provides for the possibility of joint meetings "when two or more bodies of the Organization or of the Unions must examine questions of common interest to them." In addition, and for the purpose of consistency, it decided to adopt the same rules of procedure, which were adopted at the First Session of the ACE/IP and to apply them *mutatis mutandis* to the ACMEC.

10. It is proposed, therefore, that for the purpose of consistency, the above rules of procedure be adopted *mutatis mutandis* for the future Committee(s) on Enforcement.

11. *Membership and observers.* The Joint Meeting of the ACE/IP and ACMEC adopted the same working arrangements with regard to membership and observers,¹⁰ as were adopted by the first meeting of the ACE/IP¹¹ and invited all Member States of WIPO and/or the Paris Union as members of the ACE/IP, and as Observers, Member States of the United Nations that are not members of WIPO or the Paris Union, and certain intergovernmental organizations and non-governmental organizations accredited with observer status with WIPO. Pursuant to Rules 7 and 8 of the General Rules of Procedure, and in the interest of

⁷ Proposed organizational and procedural arrangements for the Working Groups are described in paragraphs 8 to 14 of the present document.

⁸ Provided for in Rule 1 of the WIPO General Rules of Procedure

⁹ Document ACE/IP/1/2, paragraphs 4 and 5, and document ACE/IP/1/3, paragraph 2

¹⁰ Document ACE/IP - ACMEC/2, paragraphs 9 and 10

¹¹ Documents ACE/IP/1/2, paragraphs 6 and 7, and ACE/IP/1/3, paragraph 2

consistency, all Member States of WIPO and/or the Berne Union were invited as members of the ACMEC, and as Observers, Member States of the United Nations that are not members of WIPO or the Berne Union and certain intergovernmental organizations and non-governmental organizations accredited with observer status with WIPO. In addition, a number of non-governmental organizations were invited as *ad hoc* observers.

12. In view of the above, it is proposed that the status of members and observers of the future Committee(s) be established according to the above-mentioned Rules. In order to most effectively represent their position, the Member States of WIPO may wish to consider including in their respective delegations other concerned agencies responsible for the enforcement of industrial property rights and copyright and related rights¹² and, if practicable, to consider including those agencies in the delegation. The future Committee(s) might thereby facilitate communication and networking among the relevant stakeholders at the national and international levels.

13. *Working groups*. As indicated in paragraph 6 above, it is proposed that the Committee(s) may, under the Program and Budget, set up Working Groups to assist in its/their deliberations. It is contemplated that the Working Groups could be convened between sessions of the Committee(s), to discuss specific issues of particular technical complexity or difficulty that relate to the projects that are included in the work of the Committee(s).

14. *Funding for participation of government officials*. It is furthermore proposed, as in previous meetings of the ACE/IP and ACMEC, that funding be available to facilitate the participation of representatives of developing countries and of certain countries in Europe and Asia.

15. *The WIPO General Assembly is invited to:*

(i) *consider and take a decision on the options proposed in paragraph 5, above;*

(ii) *approve the establishment of the Advisory Committee(s) on Enforcement for the purposes indicated in paragraph 7 and with the proposed membership and the organizational and procedural proposals contained in paragraphs 8 to 14.*

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¹² They could include, for example, one or more of the following: judiciary/judicial service; customs; police; prosecutors (in lower and higher courts); and ministries responsible for law/legal affairs.