

## **Advisory Committee on Enforcement**

### **Eighth Session**

**Geneva, December 19 to December 20, 2012**

#### SUMMARY BY THE CHAIR

*Adopted by the Committee*

1. The eighth session of the Advisory Committee on Enforcement (ACE) was held from December 19 to 20, 2012. The session was attended by 67 Member States and 21 Observers.
2. Mr. Francis Gurry, Director General of WIPO, welcomed the Committee and highlighted the importance of the subject matter of building respect for intellectual property (IP), also illustrated by the supportive interventions made by Member States during the 2012 General Assemblies. The Director General urged the Committee to deliberate on creative solutions for WIPO to have a positive impact on building respect for IP.
3. Under Agenda Item 2, Ambassador Thomas Fitschen, Deputy Permanent Representative, Permanent Mission of Germany, was elected as Chair. The Chair made opening remarks, recalling the mandate of the ACE as agreed by the WIPO General Assemblies in 2002, and the application of Recommendation 45 of the WIPO Development Agenda to the work of the Committee. The ACE is an important instrument to work towards WIPO Strategic Goal VI, to arrive at a shared understanding and cooperation among Member States to build respect for IP. The Chair noted the common interest of all Member States in building respect for IP and ensuring the implementation of the international system of IP protection that they had agreed upon, even though the respective conditions under which Member States implement their legal obligations domestically may be different. The Chair emphasized that building respect for IP presents an ongoing challenge and highlighted the usefulness of the ACE for Member States to exchange information and deliberate on options to collaborate and support each other. The Committee should serve as a mechanism for Member States to coordinate work towards the goal of contributing to an environment that fosters respect for IP.

4. Under Agenda Item 3, the Chair noted that no requests were made for *ad-hoc* observer status.
5. Under Agenda Item 4, the Committee adopted the Draft Agenda (document WIPO/ACE/8/1 Prov.) with amendments, as follows. A new Agenda Item 9 is included and reads "Contribution of the ACE to the implementation of the respective Development Agenda recommendations". Agenda Item 10 reads "Adoption of the Summary by the Chair". Agenda Item 11 reads "Closing of the session".
6. The Delegation of Belgium, speaking on behalf of the Group B, stated that the inclusion of Agenda Item 9 should not constitute a precedent for the future.
7. Under Agenda Item 5, the Committee adopted the draft Summary by the Chair of the Seventh Session of the ACE (WIPO/ACE/7/11 Prov. 2), with the amendment requested by the Representative of Third World Network to delete the second sentence of paragraph 26 of the document.
8. The Committee heard Opening Statements by the Group of Central European and Baltic States, the Group B, the Development Agenda Group, the Group of Latin American and Caribbean Countries, the Delegation of the European Union, and the Representative of the Third World Network.
9. The Delegation of Hungary, speaking on behalf of the Group of Central European and Baltic States, expressed the Group's full support for the work of the Committee which has a very important role in supporting the Member States in their efforts to address IP infringements. It was further stated that deliberation on the future work of the Committee should reflect a holistic approach, involving constructive cooperation of all the stakeholders.
10. The Delegation of Belgium, speaking on behalf of the Group B, stressed the importance of the Committee and of enforcement in general to right holders, consumers and the economy. It was stated that the ACE provides a valuable forum for the exchange of information concerning the enforcement of IP rights. The Group's constructive spirit and support for the work of the Committee was pledged.
11. The Delegation of Peru, speaking on behalf of the Group of Latin American and Caribbean Countries, noted the importance of the Committee, in particular to its region, and highlighted its support for the thematic approach undertaken by the Committee, and expressed its satisfaction with the work of the Committee, and its confidence that future work will be equally productive.
12. The Delegation of Brazil, speaking on behalf of the Development Agenda Group, noted that the working documents of the eighth session represent a positive contribution by enriching the debate on how to build respect for IP. It was further expressed that the Committee should work towards enriching and consolidating the concept of building respect for IP and WIPO's Strategic Goal VI. It was emphasized that the application of Recommendation 45 of the Development Agenda is essential in linking enforcement with the promotion of broader social and economic interests, such as the transfer and the dissemination of technology. The Development Agenda Group further noted that only WIPO has the necessary credentials of expertise and legitimacy to lead the debate on how to better ensure IP protection; in addition, the contributions of the ACE to the Development Agenda were further highlighted. The Development Agenda Group noted its commitment to contribute constructively to the debate within the Committee.

13. The Delegation of the European Union expressed its commitment to fight against counterfeiting and piracy, and highlighted the importance of developing reliable methodology to measure the impact of counterfeiting and piracy, the role of Corporate Social Responsibility (CSR) as part of an enforcement strategy, as well as other preventive measures, such as awareness-raising.
14. The Representative of the Third World Network noted that the work of the Committee should be balanced and development-oriented. The Representative stressed that IP enforcement should respect other competing legal obligations of Member States and expressed concerns over the growing public private partnerships in the area of IP enforcement.
15. Under Agenda Item 6, the Committee heard presentations by eight speakers relating to the various items of the work program (working documents WIPO/ACE/8/4 to WIPO/ACE/8/11). The Committee valued the quality and balanced approaches of the working documents and the presentations.
16. In the presentation relating to Item 2 of the work program on “[i]dentification of different types of infractions and motivations for IPR infringements, taking into account social, economic and technological variables and different levels of development”, the Secretariat of the National Board against Counterfeiting, Hungarian Intellectual Property Office, presented the results of a survey on consumers’ awareness and attitudes in relation to counterfeiting in Hungary. A number of Delegations noted that the challenges described in the presentation from Hungary were also present in their own countries and inquired on the specifics of Hungary’s future action plans based on the information gathered in relation to consumer attitudes. A number of Delegations noted the importance of awareness-raising and education in building respect for IP, and also expressed interest in sharing survey methods and education materials, to reach in particular the more sophisticated consumer group with online purchasing power. The Delegation of Turkey showed its appreciation for the survey conducted in Hungary and suggested that the Secretariat prepare a sample survey to measure the levels of consumer awareness concerning counterfeiting and piracy. The Delegation of France conveyed support for the method used by Hungary, namely to study consumer attitudes and take relevant actions as appropriate. The Delegation further offered to make a more detailed presentation at the ninth session of the ACE on the awareness-building activities undertaken within and outside France by the National Anti-Counterfeiting Committee (CNAC).
17. Four presentations were made in relation to Item 3 of the work program on “[t]argeted studies with an aim to developing analytical methodologies that measure the social, economic and commercial impact of counterfeiting and piracy on societies taking into account the diversity of economic and social realities, as well as different stages of development.”
18. The United Kingdom (UK) IP Crime Report Team presented the methodology used in developing the UK Annual IP Crime Report. The IP Crime Report is a reference document to share IP enforcement activities with diverse stakeholders, including right holders, and provides a factual, bigger picture on IP Crime within the UK. The annual publication allows the identification of relevant trends and the IP Crime Group partners work to raise awareness and encourage promotion of the Group’s activities. Delegations expressed interest in the UK Annual IP Crime Report and inquired on the new trends identified and the impact of the Report on IP enforcement. Discussions covered the relationship between IP crime and money laundering, appropriate sentencing, and awareness-raising activities, including the prosecution e-learning toolkit.
19. The European Commission introduced the study it commissioned to measure IP rights infringements in the internal market. This was followed by RAND Europe’s presentation of its

report on a new approach to estimate the impact of infringement on sales. Subsequently, the EU Observatory presented its projects, including the study it commissioned on “European Citizens and Intellectual Property: Awareness, Understanding, Attitude and Care” and the IP impact study, which will analyze the contribution of IP to EU growth and employment. Delegations expressed interest in the methodology presented by RAND Europe, noting the general challenges relating thereto, including the reliability of data, potentially providing information regarding trends but not an absolute value. Alternate approaches were discussed, in particular the use of company monitoring data although it was recognized that such data was often not accessible since it is commercially sensitive.

20. The State Agency on Intellectual Property (AGEPI) of the Republic of Moldova presented the recent activities undertaken to measure the social, economic and commercial impact of counterfeiting and piracy. The authorities were committed to address counterfeiting and piracy in Moldova, and presented the study undertaken on the knowledge, attitudes and practices, focusing on the consumers who deliberately purchase counterfeit goods. Information was shared on the robust activities undertaken including the creation of an Information Center on Intellectual Property and the plans for future work. A number of Delegations noted similarities with the situation within their own countries and commended the Republic of Moldova on the activities to enforce intellectual property rights despite the history and the size of the market.

21. The Moroccan Industrial and Commercial Property Office presented the study on the economic impact of counterfeiting in Morocco, undertaken by the National Committee for Industrial Property and Anti-Counterfeiting (CONPIAC), a public private partnership. The study, which is being finalized, aims to provide a nationwide diagnosis of the situation, and attempts to identify sectors that are more affected by counterfeiting. The study looks into the channels through which counterfeits are introduced, and assesses the efficacy of enforcement tools. Diverse methodologies were explored to measure the impact of counterfeiting, including the flow of goods in the market, the size of the market and the scale of tax and/or of job losses. The need for a central database and collaboration between right holders and enforcement agencies was emphasized. Delegations expressed interest to learn more about these initiatives, including in relation to the central database and a “Clean Shop” label that would allow consumers to be confident that they are purchasing genuine goods.

22. The Korean Intellectual Property Office (KIPO) presented its Anti-Counterfeiting Policies, especially activities in relation to: KIPO’s Special Judicial Police Force, which directly investigates counterfeit goods-related crimes, including through an online investigation team equipped with digital forensics tools; the monetary reward system to promote reporting of counterfeit goods; its IP online monitoring system, which detects postings of counterfeit goods distributed through Korean online open markets and online shopping malls; and raising consumer awareness, in order to publicize the harmful effects of counterfeit goods and to encourage the consumption of genuine goods. A number of Delegations noted that counterfeit goods on the Internet present one of the biggest emerging challenges, and requested further details about the Internet-related enforcement activities, including information on the reaction of the general public. Further information was also sought on the specifics of the monetary reward system.

23. The Delegation of Algeria presented the “Stop Piracy” campaign that was undertaken in October 2012 in Algiers, a symbolic event which represents the long-term and sustainable efforts that Algeria is making to combat counterfeiting and piracy. The film showed the destruction of counterfeit and pirated products, which were later incinerated in a laboratory, respectful of the requirements to protect the environment. The film portrayed the speech by the Algerian Minister of Culture, highlighting the commitment of the Algerian government to eliminate all forms of IP right infringement.

24. Mr. Andrew Christie, Professor of Intellectual Property, Melbourne Law School, presented a study on “Voluntary Mechanisms for Resolving IP Disputes”, which analyzes and compares 16 voluntary mechanisms, adopted by 10 different enterprises. The presentation contextualized IP enforcement in the real world and the virtual world, highlighting the potential important role of voluntary mechanisms in the enforcement of IP in the online world. It also provided observations and possible initiatives, including guidelines, model policy, and soft law, that may follow to improve the effectiveness, the efficiency, the fairness and transparency of such mechanisms, thereby enhancing the overall integrity of the IP enforcement system online, as well as taking due note of the societal interests.

25. The Delegation of France and the Delegation of the European Union shared their respective experience in facilitating voluntary mechanisms to address online counterfeiting and the progress and impact made through such mechanisms. The importance of balance and judicial review were underscored. Great interest in the topic was expressed by other Delegations, noting in particular, the need for a global framework for such voluntary mechanisms, questions relating to actual implementation, the relevance of safe harbors, and the importance of transparency and accountability, in particular where the private sector is “self-regulating”.

26. The Secretary of the Panel of the World Watch and Jewellery Show BASELWORLD, Mr. Christoph Lanz, presented the work of the Panel, the in-house arbitration for the trade show, which operates in a streamlined manner with the Panel’s decisions being rendered within 24 hours, and providing remedies such as the withdrawal of the infringing products, the closure of an exhibitor’s booth, and suspension of the exhibitor from participating in the next exhibition. The Delegation of the United States of America shared its national experience with the “trade certification program”, a cooperative arrangement between private sector trade show organizations and the U.S. government. Delegations inquired on the possibilities to expand the model of the BASELWORLD Panel to other trade fairs. Parallels were made between the activities in the real world, e.g., BASELWORLD Panel, and the online world, e.g., voluntary mechanisms presented in the study by Professor Christie.

27. Under Agenda Item 7, the Secretariat introduced document WIPO/ACE/7/2 on recent activities of WIPO in the field of building respect for IP, guided by the 2012-2013 Program and Budget, reflecting Development Agenda Recommendation 45 and WIPO Strategic Goal VI. The document sets out assistance provided to Member States in the areas of legislative advice, training and awareness-raising, 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, and WIPO publications on the latest developments in the area of building respect for IP. The Secretariat noted that the description of each activity is accompanied by information about the venue, any partnering organizations, participating countries, a brief summary of the objectives of the activity, and web link to the full program. The Committee took note of the information contained in the document.

28. The Delegation of Turkey drew the Committee’s attention to the Seventh Global Congress on Combating Counterfeiting and Piracy, which will take place in Istanbul, Turkey from April 24 to 26, 2013, noting that it is consistent with the objectives of the ACE. A number of Delegations stated that the Global Congress is an important platform to further debate the topics addressed by the Committee, and requested further information about the program and the role of WIPO in the Global Congress. The Delegation of Cameroon highlighted the importance of awareness, education and prevention, and requested more activities to take place in Africa, in particular Cameroon. The Delegation of Nepal inquired on the possibility for the WIPO Secretariat to provide assistance in establishing a national IP office. The Delegation of Brazil, the Delegation

of Egypt and the Representative of the Third World Network acknowledged the additional information provided by the Secretariat on its activities in the field of building respect for IP, and requested that further information be provided, such as speaker profiles and presentation slides.

29. The Delegation of the European Union noted the importance for WIPO to coordinate and collaborate with the EU Observatory on Infringements of Intellectual Property Rights. The Delegation of Germany noted the relevance of Program 17 to collaborate with the WIPO Academy and to provide online training programs.

30. The Secretariat noted the comments of the Member States and announced that an awareness and outreach branch will be introduced to Program 17, reflecting the WIPO goal towards a balanced approach to IP enforcement. The Secretariat also undertook that additional information on its activities will be provided to the extent possible, with the consent of the parties involved.

31. The World Customs Organization, as the Chair of the Seventh Global Congress, invited the Delegations to participate in the Congress and noted that the final program will shortly be available on the Congress website.

32. Under Agenda Item 8, document WIPO/ACE/8/3 was introduced. The document provides an analysis of the proposals made for the future work of the ACE, including an assessment of the extent to which they have already been addressed, and sets out the proposals of the Group B and the Republic of Korea made on December 13, 2012.

33. The Delegation of Belgium, speaking on behalf of the Group B, introduced the Group's proposal for the future work of the Committee to undertake a review of awareness building activities as a means of building respect for IP rights, especially among school age children and students. The Delegation of the Republic of Korea introduced its proposal in relation to practices and the operation of alternative dispute resolution systems in IP areas. The Delegation of Peru introduced its proposal on preventive actions, measures or successful experiences to complement ongoing enforcement measures with a view to reducing the size of the market for counterfeit or pirated goods. The Delegation of Slovakia presented its plans to develop a concrete, comprehensive awareness-raising campaign pilot project in consultation with the Secretariat, and expressed interest in reporting the first results of the pilot project at the ninth session of the Committee. The Delegation of Brazil, speaking on behalf of the Development Agenda Group, introduced its proposal for the Committee to review possibilities to intensify and improve WIPO's enforcement-related technical assistance, including legislative assistance. The Delegation of Egypt proposed work in relation to transfer of technology and related technical assistance and capacity building.

34. The Committee agreed to consider, at its ninth 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." The Committee also agreed that the proposals in relation to "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) and "Review of possibilities to intensify and improve WIPO's enforcement-related technical assistance, including legislative assistance" (set out in Annex II) would remain on the table for future consideration.

35. 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.

36. The Delegation of Brazil, speaking on behalf of the Development Agenda Group, welcomed the opportunity to present the Group's views in relation to the contribution of the ACE to the implementation of the recommendations of the Development Agenda. The Group noted that this is in line with the General Assembly's decision on coordination mechanisms and monitoring, assessing and reporting modalities. The Group made some comments on how the ACE is contributing to the implementation of the Development Agenda, especially in relation to Recommendation 45. This Recommendation is directly related to the competences of the ACE. It defines that WIPO shall "approach intellectual property enforcement in the context of broader societal interests and especially development-oriented concerns, with a view that 'the protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations', in accordance with Article 7 of the TRIPS Agreement". The principles contained in this Recommendation shall guide WIPO activities regarding enforcement. The Group was confident that WIPO has been making progress in the implementation of Recommendation 45 since the adoption of the Development Agenda. The work program followed, so far, provides various pertinent elements for discussion that correspond to the different views and objectives of Member States on issues of enforcement. The results of this work program were evident in the documents submitted during this session. The studies and presentations reflect WIPO's efforts to develop an "inclusive approach" in its activities on building respect for IP; they take into account diversified views and opinions on enforcement issues and are a good basis to promote a balanced discussion on building respect for intellectual property. Despite such achievements, the Group noted its belief that there is still a long way to fully implement Recommendation 45. It cited, for example, that the contribution of the protection and enforcement of intellectual property rights to the transfer and dissemination of technology can be further developed. As the Group has pointed out in the past, measuring the economic consequences of all types of intellectual property violations, especially those related to counterfeiting and piracy, is a constant challenge. Reliable statistics are essential to formulate effective measures against those violations. With regard to the work program of the ACE, the Development Agenda Group would like to see a balanced agenda for the future work, taking into account different views and needs of Member States, as it has been the case in the past sessions.

37. The Delegation of South Africa noted that it aligns itself with the statement made by the Delegation of Brazil on behalf of the Development Agenda Group. The Delegation stressed the importance of the implementation of the monitoring, assessing, discussing and reporting mechanism (Coordination Mechanism). The 2010 WIPO General Assemblies 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 is also meant to provide an opportunity to Member States to scrutinize cross-cutting issues/activities in the Organization. In this regard, time has come that an agreement is reached on a standing agenda item on the contribution of the ACE to the implementation of the relevant Development Agenda Recommendations. As stated at the 2012 General Assembly, South Africa remains committed to the mainstreaming of the Development Agenda in all of WIPO's work. The Delegation is pleased to see that the activities conducted by the ACE are primarily premised on Development Agenda Recommendation 45. The Delegation noted the document WIPO/ACE/8/2 entitled "Recent Activities of WIPO in the Field of Building Respect for IP". In this regard, the Delegation's view is that, over and above other sources/activities, the document provides a good basis for assessing the contribution of the Committee to implementing the Development Agenda. However, there needs to be 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 intellectual property. In this area of WIPO's work as well, more detailed information is needed. The Delegation concluded by noting that it would like to reiterate 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.

38. The Secretariat will forward the views set out in paragraphs 36 and 37, above, to the 2013 WIPO General Assemblies.

[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 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 ninth 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 ninth 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 ninth session of the ACE, which could complement the findings of the study.

[Annex II follows]

Proposal by the Development Agenda Group

(Proposal 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]