

## Advisory Committee on Enforcement

### Sixteenth Session

Geneva, January 31 to February 2, 2024

#### COORDINATING INTELLECTUAL PROPERTY ENFORCEMENT

*Contributions prepared by Cambodia, the Dominican Republic, Kenya, the Republic of Korea, Saudi Arabia, Uganda and the United States of America*

1. At the fifteenth session of the Advisory Committee on Enforcement (ACE), held from August 31 to September 2, 2022, the Committee agreed to consider, at its sixteenth session, among other topics, the “exchange of information on national experiences relating to institutional arrangements concerning IP enforcement policies and regimes, including mechanisms to resolve IP disputes in a balanced, holistic and effective manner”. Within this framework, this document introduces the contributions of seven Member States (Cambodia, the Dominican Republic, Kenya, the Republic of Korea, Saudi Arabia, Uganda and the United States of America) on their experiences with coordinating intellectual property (IP) enforcement.
2. The contribution by Cambodia provides an overview of the various bodies that play a role in the country’s IP enforcement efforts, as well as its National Committee for Intellectual Property, which brings together several government ministries with the purpose of coordinating and enhancing cooperation between the authorities dealing with IP enforcement. In addition to providing an overview of the composition and the main functions of the National Committee, it also lays out several initiatives to strengthen and enhance IP enforcement in the country.
3. The contribution by the Dominican Republic describes the Inter-ministerial Council for Intellectual Property, which acts as a consultative and coordination body in the area of IP in the country. The contribution explains the background of the Council, its establishment and composition, and provides an overview of its mandate.
4. The contribution by Kenya discusses the establishment of the Anti-Counterfeit Authority (ACA). Created 13 years ago to address the detrimental effects of counterfeiting in the country, the ACA enforces trademarks, industrial designs and patents. The contribution covers the genesis of the ACA, its mandate and some important lessons learned.

5. The contribution by the Republic of Korea reports on several initiatives the Korean Intellectual Property Office (KIPO) has undertaken in recent years to further strengthen its IP enforcement efforts. The contribution discusses the establishment of the Technology and Design Police Division, an investigative authority dealing with trademark, patent, design and trade secret infringement. In addition, an Integrated Reporting and Consultation Center on IP infringement was established to improve public services in dealing with IP infringement. Finally, the contribution outlines KIPO's efforts to establish a cooperative international network of investigative authorities.

6. The contribution by Saudi Arabia discusses a variety of initiatives to develop a coherent, integrated and standardized approach to IP enforcement in the country. Such initiatives include the establishment of the Standing Committee on IP Rights Enforcement and the IP Respect Council. The contribution provides an overview of each of these initiatives, including their purpose, mandate, objectives and achievements.

7. The contribution by Uganda provides an overview of the Enforcement Unit of the Uganda Registration and Services Bureau (URSB), which contributes to the efficient and effective enforcement of IP rights through the investigation and prosecution of IP-related offenses and seizures of counterfeit and pirated good in the Ugandan market.

8. The contribution by the United States of America (USA) provides the history of IP coordination bodies in the USA, an overview of the Office of the Intellectual Property Enforcement Coordinator (IPEC), including the legal basis of its establishment and its mandate, as well as the Joint Strategic Plan on IP Enforcement the IPEC is responsible for issuing. In addition, the contribution discusses the whole-of-government approach that has been adopted in enforcing IP rights in the USA, and the role IPEC has in coordinating this.

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## COORDINATING INTELLECTUAL PROPERTY ENFORCEMENT IN CAMBODIA

*Contribution prepared by Mr. Eung Chhayhong, Deputy Director, Department of Intellectual Property, Ministry of Commerce, Phnom-Penh, Cambodia\**

### ABSTRACT

Since Cambodia became a member of the World Intellectual Property Organization (WIPO) in 1995 and the World Trade Organization in 2004, the country's intellectual property (IP) system has developed gradually, showing a positive trend in the protection and use of IP rights as a vital tool for national economic growth and poverty reduction, in line with the government's Rectangular Strategy. In order to comply with international standards and reduce the development gap at the regional and international levels, the country has enacted many major IP laws and regulations and acceded to international IP treaties and conventions. In addition, international cooperation in IP-related fields with countries in the region has been broadened and strengthened. That is especially the case with organizations such as WIPO, the Japan Patent Office, the China National Intellectual Property Administration and the Korean Intellectual Property Office, which contribute significantly to the development of the IP system in Cambodia.

### I. INTELLECTUAL PROPERTY ADMINISTRATION

1. In Cambodia, IP matters have been governed by three different ministries and each responsible ministry has the authority and obligation to protect and promote the development of their respective IP field. Matters relating to copyright and related rights come under the exclusive authority of the Department of Copyright and Related Rights of the Ministry of Culture and Fine Arts, which is comprised of five divisions: the Administrative Division; the Registry Division; the Research and Development Division; the Education and Dissemination Division; and the Collective Management Organization Division. Patents, utility models, industrial designs and plant varieties are governed by the Department of Industrial Property of the Ministry of Industry, Science, Technology and Innovation, which, in addition to an innovation and creativity center, has the following five divisions: the Administrative Division; the Patent Division; the Industrial Division; the Breeder's Rights Division; and the Dispute Settlement and Cooperation Division.

2. In addition, the Department of Intellectual Property (DIP), under the Ministry of Commerce, is responsible for trademarks, collective marks, certification marks, geographical indications (GIs) and trade secrets. DIP has one Director and a number of Deputy Directors, with 10 specific offices covering, respectively, administration, mark registrations, post-mark registrations, international mark registrations, GIs and trade secrets, automation and information technology, education and public awareness, cooperation and legal affairs, litigation and IP policy.

### II. NATIONAL COMMITTEE FOR INTELLECTUAL PROPERTY

3. In 2008, the National Committee for Intellectual Property (NCIP) was established by the Royal Government as an extension of the interministerial committee created in 1999 to govern three areas of IP: trademarks, copyright and patents. The membership of NCIP consisted of the

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\* The views expressed in this document are those of the author and not necessarily those of the Secretariat or of the Member States of WIPO.

Minister of Commerce as the Chair, the Secretaries of State of the Ministry of Industry, Science, Technology and Innovation and the Ministry of Culture and Fine Arts as Vice Chairs, and representatives of 11 other ministries as members. The main purposes of establishing the Committee were, inter alia, to lead coordination and enhance smooth cooperation between ministries and institutions, and to cooperate with the competent authorities and the courts to prevent and eradicate infringements of IP rights.

4. In 2021, the Sub-Decree on the Establishment of NCIP was amended and membership of NCIP was expanded to 17 ministries in order to further broaden IP cooperation. It is chaired by the Minister of Commerce with the Secretary of State of the Ministry of Commerce as Permanent Deputy Chair and the Secretaries of State of the Ministry of Industry, Science, Technology and Innovation, the Ministry of Culture and Fine Arts, and the Ministry of the Economy and Finance as Vice Chairs. Representatives from 13 other ministries are members, with the addition of the Ministry of Foreign Affairs and International Cooperation, the Ministry of Labor and Vocational Training and the Ministry of Women Affairs. NCIP has a Secretariat with a membership comprised of technical officials from all line ministries.

5. The 17 ministries that are members of NCIP are:

- Minister of Commerce: Chair
- Secretary of State of the Ministry of Industry, Science, Technology and Innovation: Vice Chair
- Secretary of State of the Ministry of Culture and Fine Arts: Vice Chair
- Secretary of State of the Ministry of Economy and Finance: Vice Chair
- Council of the Prime Minister: Member
- Ministry of the Interior: Member
- Ministry of Foreign Affairs and International Cooperation: Member
- Ministry of Agriculture, Forestry and Fisheries: Member
- Ministry of Education, Youth and Sports: Member
- Ministry of Environment: Member
- Ministry of Information: Member
- Ministry of Justice: Member
- Ministry of Post and Telecommunication: Member
- Ministry of Health: Member
- Ministry of Tourism: Member
- Ministry of Women Affairs: Member
- Ministry of Labor and Vocational Training: Member.

6. The main functions of NCIP are to:

- act as the focal point for coordinating bilateral or multilateral cooperation in the field of IP with other countries, international organizations and development partners to identify and implement projects and harness IP-related technical assistance;
- collaborate to promote the drafting of IP-related laws and regulations and implement obligations arising from international treaties, agreements and conventions;

- collaborate to promote the effective enforcement of IP-related laws and regulations in order to prevent and eliminate IP infringement, acts of unfair competition and other related infringements, including of genetic resources, traditional knowledge and cultural expressions;
- collaborate on research and analyze the benefits and effects of accession to IP-related international agreements, conventions and treaties;
- cooperate to prepare and promote the implementation of national IP policy and the NCIP action plan;
- collaborate with relevant ministries and institutions to disseminate IP laws and regulations and improve the knowledge and capacities of, inter alia, enforcement officers, trainers, IP professionals, the private sector and the general public;
- collaborate with relevant ministries and institutions to integrate IP-related subjects into the curriculum of public and private educational institutions; and
- prepare the annual IP report for the Royal Government.

7. NCIP has a Secretariat led by DIP, which is comprised of technical officers from different ministries. Each member of the Secretariat will be the focal point for coordination of their respective IP affairs. As the head of the Secretariat, DIP takes an active role in leading the coordination and cooperation of IP affairs with relevant ministries, especially in providing capacity-building and IP expert testimony in infringement cases as requested.

8. Many agencies also work in IP enforcement. The main ones are listed in section III. Each has its own authority and procedures. The option of taking action through an agency depends on the IP rights holder, the seriousness of the case and what action the rights holder wishes to take.

9. As the IP knowledge and expertise of enforcement agencies other than IP departments is still limited, there are often requests for testimony from IP experts or assessments of IP validity or IP infringement before action is taken. That also includes IP practitioners, who usually approach IP departments for expert opinions before taking action on infringement through enforcement agencies.

### **III. INTELLECTUAL PROPERTY ENFORCEMENT AGENCIES**

#### **A. INTELLECTUAL PROPERTY DEPARTMENTS**

10. The IP departments of the three Ministries responsible for IP, including the Department of Intellectual Property, the Department of Industrial Property and the Department of Copyright and Related Rights, play a vital role as mediators to settle disputes involving trademarks, patents and copyright matters between rights holders (complainants) and infringers (defendants). Those departments only have authority in administrative enforcement; their main role is to help the parties to reach a mutually beneficial solution. Such administrative resolution of IP disputes is the most favorable, timely and cost-effective avenue for IP rights holders to take before proceeding to other enforcement agencies. DIP draws up, or at least advises on, IP rights enforcement policy, provides consultation services and expertise to courts and coordinates with other Cambodian enforcement bodies on complaints of IP violations.

**B. CONSUMER PROTECTION, COMPETITION AND FRAUD REPRESSION  
DIRECTORATE-GENERAL UNDER THE MINISTRY OF COMMERCE**

11. The Consumer Protection, Competition and Fraud Repression Directorate-General comes under the Ministry of Commerce. It is responsible for ensuring the quality and safety of products and services for the protection of consumer health and safety, protecting consumers' economic interests, guaranteeing an environment of fair competition for doing business in Cambodia, and ensuring compliance with regulatory requirements on the quality and safety of products and services. The Directorate-General is also an active IP enforcement agency for the internal market. It has the law enforcement powers of judicial police.

**C. GENERAL DEPARTMENT OF CUSTOMS AND EXCISE OF CAMBODIA UNDER THE  
MINISTRY OF THE ECONOMY AND FINANCE**

12. Customs is responsible for monitoring the import and export of goods at border checkpoints and levying duties and taxes on imports and exports. It plays an important role combating infringement, either by stopping imports so that the infringing goods do not reach consumers in Cambodia, or by taking action against exports, thereby making Cambodia less desirable as a manufacturing or transit hub for infringing goods. Customs enforcement of IP rights is normally initiated through an application made by the right holder or at the initiative of Customs itself (ex officio action), based on prima facie evidence or credible information from the public.

**D. ECONOMIC POLICE UNDER THE MINISTRY OF THE INTERIOR**

13. The Economic Police are responsible for all law enforcement activities, taking measures and combating economic crime, including offenses and infringements concerning IP rights. They are authorized to conduct searches and investigations, identify targets in collaboration with the competent authorities in order to collect evidence, and confiscate or dispose of infringing goods. Under the Code of Criminal Procedure, Economic Police officers are either judicial police officers or judicial police agents.

a) Courts

14. The judicial system of Cambodia consists of the Courts of First Instance (municipal or provincial courts), the Appeal Court and the Supreme Court. There is no separate commercial or specialized IP court. All civil cases, including IP-related civil disputes, fall under the jurisdiction of the Court of First Instance. The Trademark Act, Copyright Act and Patent Act do not provide for a detailed procedure for filing a civil IP lawsuit in court. The procedure for filing a civil lawsuit is, rather, set forth in the Code of Civil Procedure.

15. Although each authority has its own enforcement authority, they often need the opinions of IP experts from the departments responsible for IP, especially the DIP. As mentioned above, as the head of the NCIP Secretariat, DIP welcomes all requests for assistance and expert opinions from all stakeholders.

b) National Intellectual Property Policy

16. Cambodia has developed a national IP policy, which is now undergoing the final process for endorsement by the Royal Government. The vision under the policy is to develop the IP system of Cambodia as a driving force for the economy, trade, industry, culture, tourism and agriculture by promoting the protection of IP, branding Cambodian products and promoting the use of IP in the research and development of technological products, innovation and cultural industries, responding to the economic and social context of the digital and fourth industrial revolution, and contributing to achieving the vision of Cambodia for 2050. The focus of the policy is on the use of IP for the development of seven main areas: (1) agriculture; (2) trade and industry; (3) science and technology; (4) health; (5) culture; (6) tourism; and (7) education and public awareness. Six strategic plans have been developed, with specific initiatives based on each field, have been drawn up to implement the policy:

- Strategy 1: Develop IP-related laws and regulations to comply with international standards and meet the social, economic and developmental needs of Cambodia.
- Strategy 2: Modernize the IP administration and management system to strengthen institutions to manage IP-related tasks effectively and efficiently and improve the provision of IP services to the public.
- Strategy 3: Build the human capital of IP agencies to enable them to implement and perform their tasks effectively and train other stakeholders.
- Strategy 4: Disseminate and promote education and awareness of IP among small and medium-sized enterprises, relevant stakeholders and the general public.
- Strategy 5: Establish mechanisms to strengthen IP enforcement, resolve IP disputes effectively and combat IP infringement and thereby build a society with trust and respect for IP.
- Strategy 6: Promote the commercialization of IP rights to gain more economic value for IP owners.

17. Under those strategies, the following main initiatives to strengthen and enhance IP enforcement have been established:

- create an IP dispute resolution mechanism through commercial courts and promote non-judicial IP dispute resolution mechanisms to support trade and industry;
- enact the IP-related laws and regulations required for effective IP rights protection and enforcement;
- strengthen law enforcement to provide better protection of IP by promoting cooperation between law enforcement agencies, exchanges of information and experience in the use of information technology to combat counterfeit goods online and establish a joint IP data research system for relevant ministries and institutions;
- cooperate closely with the relevant authorities to combat the sale of counterfeit goods and other IP infringements and thereby increase customer trust and tourism;

- strengthen the implementation of IP laws to protect copyright holders and increase the trust of consumers of traditional knowledge and cultural products;
- develop strategies and control systems to promote the protection of traditional knowledge and cultural norms, and strengthen law enforcement against the misuse of Cambodian genetic resources, traditional knowledge and cultural regulations by other countries;
- take action to prevent the fraudulent use of Cambodian geographical indications, commodities, collective trademarks and other trademarks abroad;
- build the capacities of IP law enforcement officers and encourage broadcasters to implement and disseminate laws and regulations related to IP rights;
- Strengthen the capacities of Ministry of Health officials, law enforcement officers and officials of relevant ministries and institutions and implement IP laws to eliminate illegal drug products that affect public health; and
- build the capacities of IP officers, travel agents and stakeholders, and promote the implementation of IP laws to increase consumer confidence in the quality, reliability, accuracy and authenticity of services and tourism products.

[End of contribution]

## THE INTER-MINISTERIAL COUNCIL FOR INTELLECTUAL PROPERTY: COORDINATING THE ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS IN THE DOMINICAN REPUBLIC

*Contribution prepared by Ms. Army Ferreira Reyes, Deputy Attorney General and Coordinator, Intellectual Property and Elimination of Illicit Trade Unit, Attorney General's Office, Santo Domingo, Dominican Republic<sup>1</sup>*

### **ABSTRACT**

The creation of the Inter-Ministerial Council on Intellectual Property (Council) formalizes the synergy that all governmental institutions of the Dominican Republic have developed in relation to intellectual property (IP). The Council was born out of the need to work jointly and holistically on various IP issues, as historically each institution worked independently in the area, which did not yield good technical or practical results. The Council reaffirms IP as a priority for the Dominican Republic across three axes: the recognition of rights and the importance of excellence in registration, the promotion of creativity and innovation and IP enforcement. Work on IP enforcement is geared towards ensuring not only that the right holders' rights are being respected but also that end consumers are effectively protected, which contributed to citizen safety.

### **I. INTRODUCTION**

1. Coordinating public policy on intellectual property (IP) requires a joint effort by government bodies in the Dominican Republic working directly in that area. Policy should be focused on areas enabling the creation of the necessary system of incentives and protection.
2. The Government has therefore established the Inter-ministerial Council for Intellectual Property (Council) as a consultative and coordination entity for all government bodies working on IP in the country.
3. The driving force behind the establishment of the Council was the IP Unit of the Office of the Prosecutor General. It had the full support of the Ministry of Industry, Trade and Micro, Small and Medium-sized Enterprises (MSMEs), and in particular the Minister and the Secretary of the Foreign Trade Secretariat (VICOMEX), both of which were instrumental in having the proposal implemented by the Executive.

### **II. ESTABLISHMENT OF THE COUNCIL**

#### **A. BACKGROUND**

4. The forerunner of the Council was the National Commission for the Protection of Intellectual Property Rights (Commission), which was established on March 2, 2001, by Decree No. 303-01.

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<sup>1</sup> The views expressed in this document are those of the author and not necessarily those of the Secretariat or of the Member States of WIPO.

5. Its role was to shape and implement national policy to combat IPRs infringements and to coordinate the efforts of various public bodies to that end.

6. The Commission was composed of the following:

- the Secretary of State for Industry, Trade and Micro, Small and Medium-sized Enterprises (MSMEs), who headed the Commission;
- the Secretary of State (Technical Matters) for the Office of the President;
- the Secretary of State (Technical Matters) for Foreign Affairs;
- the Secretary of State (Technical Matters) for Industry, Trade and Micro, Small and Medium-sized Enterprises (MSMEs)
- the Secretary of State (Technical Matters) for Culture;
- the Secretary of State (Technical Matters) for Public Health;
- the Secretary of State (Technical Matters) for Social Security;
- Legal Counsel for the Executive Branch;
- the Office of the Attorney General;
- the President of the Board of the National Telecommunications Institute, who acted as coordinator;
- the Director General of Customs; and
- the Director of the National Industrial Technology Institute.

7. However, due to the lack of concrete results, the Commission was dissolved 21 years after its creation through Decree No. 776-22 of December 30, 2022, which repealed Decree No. 303-01.

### **III. ESTABLISHMENT OF THE COUNCIL**

8. The Council was established with the responsibility of designing performance criteria and coordinating the work of government bodies in their efforts to implement policies to promote IP as a tool for driving trade, foreign investment and innovation, and fostering health care and culture, and to enforce IPRs in accordance with domestic law and with the international agreements to which the Dominican Republic is a party and the provisions of which, therefore, have been enshrined in domestic law.

9. The Government of the Dominican Republic was concerned that the absence of effective coordinating body could undermine the efforts of individual institutions. That, combined with the lack of a government consultative body on IP motivated the Office of the Prosecutor General and the Ministry of Industry, Trade and MSMEs to launch the proposal.

10. Moreover, while the Dominican Republic boasts a strong record in terms of recognition of IPRs and its National Industrial Property Office is very advanced, the protection of other equally important areas of IP has shortcomings. In the light of the foregoing, there was a need to strike a balance and strengthen the degree of protection afforded across all areas of IP.

#### **IV. COMPOSITION OF THE COUNCIL**

11. As an inter-institutional body, the Council is composed of various institutions:
- the Ministry of Industry, Trade and MSMEs, represented by the Deputy Minister for Foreign Trade (VICOMEX), which coordinates the Council;
  - the Office of the Attorney General, represented by its IP Unit;
  - the Ministry of Foreign Affairs (MIREX);
  - the Ministry of Health and Social Security (MISPAS);
  - the Ministry of Agriculture;
  - the Directorate General of Customs (DGA);
  - the National Industrial Property Office (ONAPI);
  - the National Copyright Office (ONDA);
  - the National Telecommunications Institute (INDOTEL); and
  - the National Consumer Rights Protection Institute (ProConsumidor).

#### **V. AREAS OF RESPONSIBILITY OF THE COUNCIL**

12. The Council's mandate is to:
- draft IP policy proposals for its institutional members designed to promote trade, investment and innovation, and foster health care and culture;
  - coordinate the activities of the bodies represented on the Council with a view to ensuring full compliance with IP law and fulfilment by the Dominican Republic of its obligations under the related international trade agreements;
  - coordinate and develop the country's position on IP matters in its dealings with the World Trade Organization (WTO) and the World Intellectual Property Organization (WIPO) and in view of future trade negotiations;
  - submit recommendations for settling international disputes that involve the Dominican Republic and arise from cases concerning alleged failures to enforce IPRs;
  - foster institutional coordination to ensure that IPRs are enforced and that rights holders and consumers in the country are protected; and
  - submit an annual report on the situation regarding the promotion and protection of the IPRs in the Dominican Republic.

#### **VI. COUNCIL MEETINGS**

13. The Council meets regularly, at least six times a year. The meetings are called by the coordinator. The coordinator may also call extraordinary meetings where it is deemed necessary or at the request of one of its members.

14. A priority item on the Council's agenda is the impact of the inclusion of the Dominican Republic by the Government of the United States in the Watch List of the latter's annual Special 301 Report on Intellectual Property Protection and Enforcement.

15. The Council is currently drafting its rules of procedure, which will facilitate the organization of its work and, thereby, the achievement of its objectives, in accordance with Article 5 of Decree No. 776-22.

16. Another key consideration for the Council will be to leverage opportunities for cooperation with international bodies working in the same field.

## **VII. OBJECTIVE OF THE COUNCIL**

17. Lastly, from the point of view of the Dominican Republic, the Council's objective is to devise a joint operational strategy for establishing a balanced IP system. The strategy will address the following four main points:

- recognizing rights;
- fostering creativity and innovation;
- enforcing and respecting the rights of rights holders; and
- protecting consumers.

18. A joint program of work has been drafted and the government bodies and agencies to lead that work and sit on the Council have been selected on the basis of those four points. Their task will be to strengthen the system, not just by leading the way in terms of the recognition of rights, but also by protecting them effectively.

[End of contribution]

## COUNTERING COUNTERFEITS: KENYA'S DECISIVE STEPS TOWARDS INTELLECTUAL PROPERTY PROTECTION AND ENFORCEMENT

*Contribution prepared by Dr. Robi Mbugua Njoroge, Executive Director and Chief Executive Officer, Anti-Counterfeit Authority, Nairobi, Kenya\**

### ABSTRACT

The challenge of counterfeiting is worsening around the world. Research findings show that the scourge of counterfeiting continues to spread like a bushfire because of the spread of technologies for mass production, the lucrateness of this illegal activity, and consumers' strong affinity for brand-name products. Kenya has not been spared. Counterfeiting infringes on the intellectual property rights of brand owners and stifles innovation and legitimate and legal commerce. To streamline earlier disparate efforts in the fight against counterfeiting in Kenya, the Anti-Counterfeit Authority, a body with powers to enforce trademarks, industrial designs and patents was created 13 years ago. The Authority's IP protection and enforcement work is in accordance with Kenya's obligation under bilateral, multilateral and international agreements. The Authority has since led the fight against counterfeiting through research, public awareness, and enforcement. Its enforcement work has led to the seizure of counterfeit goods worth Ksh 3.4 billion (approximately USD 19.9 million) and the destruction of goods worth Ksh 958.42 million (approximately USD 6.35 million)

### I. KENYA STEPS UP EFFORTS TO FIGHT AGAINST THE SCOURGE OF COUNTERFEITING

#### A. INTRODUCTION

1. Trade in counterfeit goods is not a new phenomenon. What is new is the sheer volume of counterfeit goods and their impact on the economies, human health and safety and the environment.
2. The perilous impact of counterfeiting on any market cannot be over-emphasized. According to research by the Anti-Counterfeit Authority (ACA)<sup>2</sup>, the volume of illicit trade in Kenya grew from Ksh 726 million (approximately USD 4.81 million) in 2017 to Ksh 826 million (approximately USD 5.48 million) in 2018. A substantial amount of the goods in the illicit trade market are counterfeits. The Kenyan economy is estimated to lose Ksh 600 billion (approximately USD 3.98 billion) annually due to counterfeiting as 20 per cent of products on the market are counterfeit. The United Nations Office on Drugs and Crime<sup>3</sup> estimates that nearly 500,000 lives are lost yearly to fake/counterfeit medicines in sub-Saharan Africa including Kenya.
3. So how has Kenya dealt with the phenomena of counterfeiting over the years?

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\* The views expressed in this document are those of the author and not necessarily those of the Secretariat or of the Member States of WIPO.

<sup>2</sup> Anti-Counterfeit Authority, The National Action Plan And Implementation Framework to Combat Illicit Trade - 2019-2022, available at <https://aca.go.ke/downloads/publications/199-national-action-plan-to-combat-illicit-trade>.

<sup>3</sup> United Nations Office on Drugs and Crime, Trafficking in Medical Products in the Sahel: Transnational Organized Crime Threat Assessment – Sahel, available at: [unodc.org/documents/data-and-analysis/tocta\\_sahel/TOCTA\\_Sahel\\_medical\\_2023.pdf](https://www.unodc.org/documents/data-and-analysis/tocta_sahel/TOCTA_Sahel_medical_2023.pdf).

## B. THE GENESIS OF ANTI-COUNTERFEIT AUTHORITY (ACA)

4. Before 2008, Kenya did not have a law to deal with counterfeiting. However, the Kenyan government formed an administrative body called the Anti-counterfeit and Substandard Products Secretariat. The secretariat comprises officers from the Kenya Revenue Authority (KRA), the Weights and Measures Department, and the Kenya Bureau of Standards (KEBS). The Secretariat was responsible for “coordinating the fight against counterfeit products, prohibited and restricted goods, and to ensure compliance of the relevant requirements by the respective laws”.

5. This outfit was later declared as lacking legal mandate and authority to enforce trademark or other related infringements as they attempted to do in the *Doshi Iron Mongers Ltd v Weights and Measures Department* [2006] eKLR (High Court Case 1206 of 2004)<sup>4</sup>. The Court of Appeal agreed with the High Court that the secretariat had no legal mandate or statutory foundation. This was evident from the history of the secretariat. It was an impromptu unit formed by the Kenyan government and private sector players to deal with issues of counterfeiting and piracy at a time when there was no proper legal framework for protecting and enforcing Intellectual Property (IP) rights.

6. The Court of Appeal held that the law did not empower the secretariat to enforce IP rights without a valid or genuine claim by the right holder. The Court affirmed the Latin maxim, “*Nullum crimen sine lege*,” meaning there is no crime without law.”

7. Given the court decisions, legal imperatives and lobbying and advocacy by manufacturers through the Kenya Association of Manufacturers the establishment of an independent agency anti-counterfeiting institution was seen as a necessary step. The private sector in general and manufacturers, in particular, drove the process as they suffered most of the deleterious effects of infringement of IP rights, counterfeiting and piracy.

8. Consequently, The Anti-Counterfeit Act of 2008 was passed and the Anti-Counterfeit Agency (now Authority) was established in 2010 as per section 3 of the Act. The Authority is an independent agency with enforcement and coordinating mandates. Section 5 (b) provides that the Authority shall “coordinate with national, regional or international organizations involved in combating counterfeiting.”

9. The Authority is governed by a board comprising the chairperson and eight members. Five members represent various government agencies while the other three represent consumers, manufacturers and IPR experts<sup>5</sup>.

10. The non-executive board is charged with formulating the policies and oversight for the Authority. The secretariat is organized in five directorates- legal and compliance; enforcement; corporate; internal audit; and research, planning and public awareness- and is headed by an Executive Director (Chief Executive Officer). There are five directorates each headed by a director. The Authority has a staff complement of 125 and 5 regional hubs: Coast (Mombasa), Western (Kisumu), North Rift (Eldoret), Central (Nyeri) and Eastern (Athi-River).

11. Under section 5 of the Anti-Counterfeit Act, 2008, the Authority has five core functions key among them to combat counterfeiting, trade and other dealings in counterfeit goods in Kenya; to enlighten the public on matters relating to counterfeiting; to coordinate with national, regional and international organizations involved in combating counterfeit; to conduct research and inquiries into matters relating to counterfeiting and the protection of intellectual property rights

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<sup>4</sup> The High Court decision was upheld by the Court of Appeal in *Kenya Revenue Authority (KRA) v Doshi Iron Mongers* [2016] eKLR (Civil Appeal 162 of 2006).

<sup>5</sup> Section 6 of Anti-Counterfeit Act, 2008.

and develop appropriate policy advisories/briefs to the relevant Cabinet Secretary; and to devise and promote training programs on combating counterfeiting.

12. Kenya has a robust intellectual property law regime of which the Anti-Counterfeit Act, 2008 only forms a part. The legal regime is formed by the Constitution of Kenya (2010), select pieces of legislation, international intellectual property treaties, conventions, or instruments to which the country is a party.

13. The Constitution expressly protects IP, innovation and technology transfer. First, Article 260 (c) includes IP in the property definition. Secondly, Article 40 (5) obliges the state to support, promote, and protect the intellectual property rights of the people of Kenya. Further, Article 69 (1) (c) and (e) mandates the state to protect and enhance intellectual property, traditional or indigenous knowledge of biodiversity and the genetic resources of communities and protect genetic resources and biological diversity. Under Article 11 (1), the Constitution guarantees cultural expressions and other forms of traditional expressions.

14. The above constitutional principles and values are elaborated in six pieces of legislation that recognize and protect intellectual property rights. The statutes include:

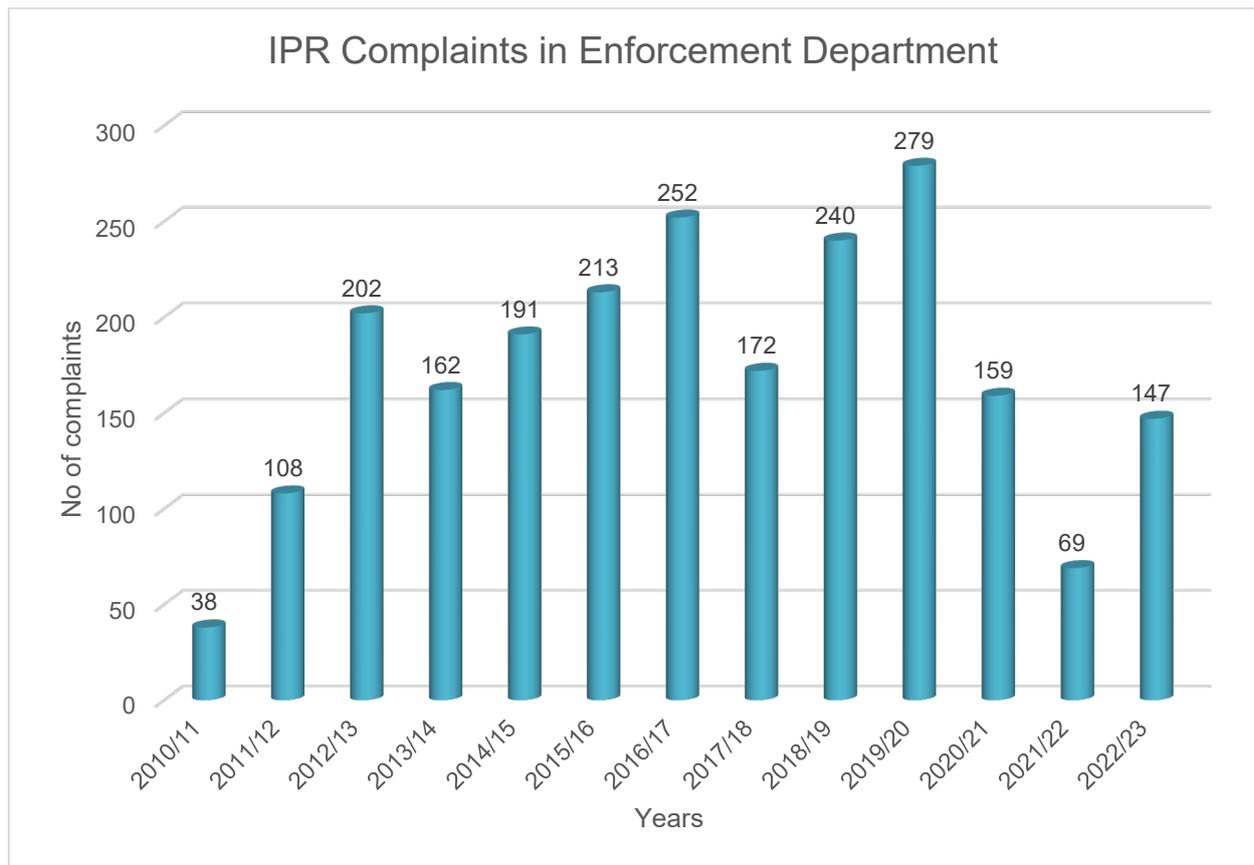
- Anti-Counterfeit Act, No 13 of 2008;
- Industrial Property Act, No 2 of 2001;
- The Trademark Act Cap 506;
- The Copyright Act, No 12 of 2001;
- The Seed and Plant Varieties Act, Cap 226; and
- Protection of Traditional Knowledge and Cultural Expressions Act, 2016.

15. The Anti-Counterfeit Act, of 2008 also provides for a multi-agency coordination mechanism. In Section 22 (3) sets out how officers from various government institutions shall be designated as inspectors for purposes of enforcing it.

16. For the last 13 years of existence, the Anti-Counterfeit Authority has received a total of 2,232 Intellectual Property Rights (IPR) complaints from different brand owners and their agents. This is in line with the requirement of the Trade Mark Act (Cap 506), Section 40 (3) of the Trade Mark Act provides in part:

“the registration of a person as a proprietor of a certification trade mark in respect of any goods, shall, if valid, give to that person an exclusive right to the use of the trade mark in relation to those goods, and without prejudice to the generality of the foregoing words, that right shall be deemed to be infringed by any person who, not being the proprietor of the trade mark, or a person authorized by him under the regulations in that behalf using it in accordance therewith, uses a mark identical with it or so nearly resembling it.”

17. The above means that a lawful enforcement of a trademark cannot ensue in the absence of a complainant.

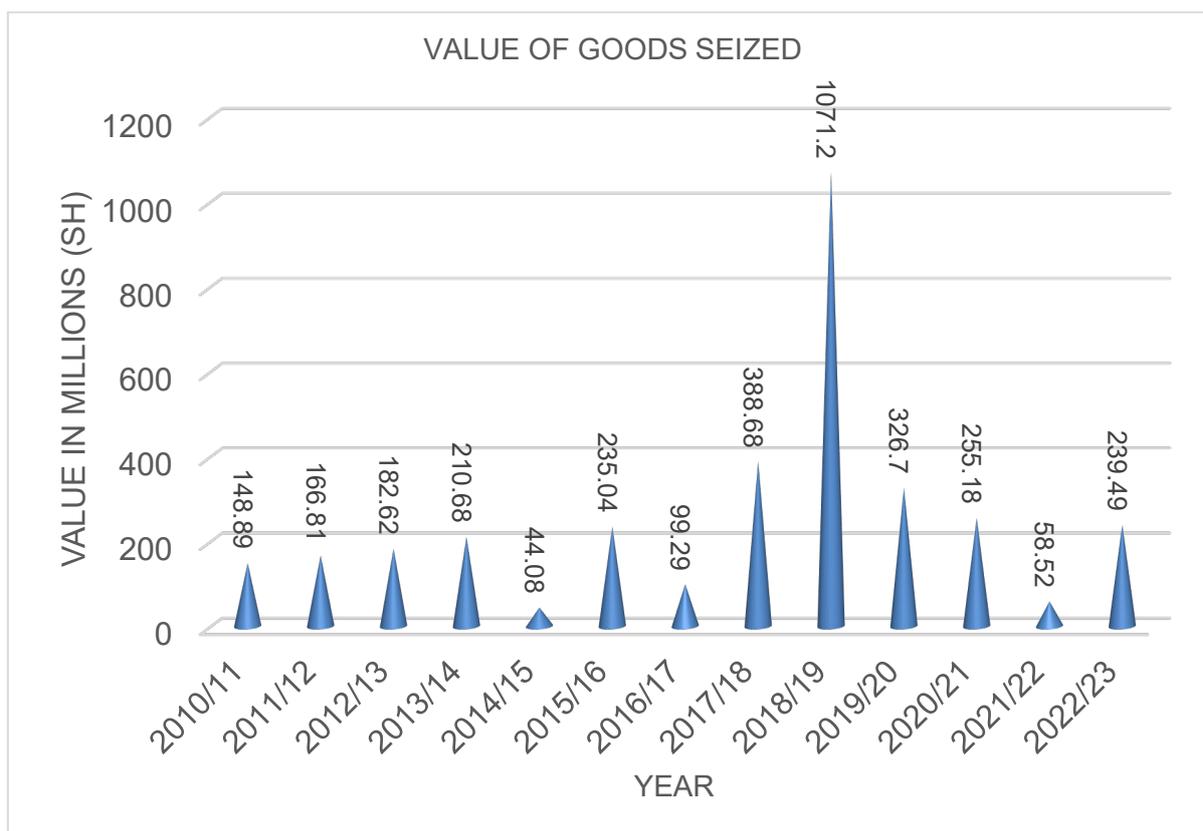


18. To facilitate persons authorized by brand owners to act as their agents as trademark is a proprietary right *in personam*, Anti-Counterfeit Authority has developed a clear framework for registration. As of July 30, 2023, ACA had received 64 applications and approved 36 applicants for registration of IPR agents. Two had been rejected as they lacked clear authorization by the proprietors of the trademark and 16 others were sent back to the applicants as they had provided insufficient information.

19. Further, the Authority has received 3661 consumer complaints in the last 13 years. The complaints from brand owners, agents, and consumers form part of the basis for inspections and targeted surveillance that the Authority carries out across the country.

20. Pursuant to section 5 (b) of the Anti-Counterfeit Act, 2008, the authority has initiated and supported the prosecution of 429 cases. About 40 per cent of the cases have been prosecuted in different courts of law in Kenya while 60 per cent have been resolved through alternative dispute resolution and compounding.

21. In executing its mandate, the Authority has achieved some remarkable successes in its IP protection and enforcement roles. For instance, it has seized counterfeit goods worth Ksh 3.4 billion (approximately USD 19.9 million) and destroyed such goods worth Ksh 958 million (approximately USD 6.35 million). This success has been possible due to the collaboration with brand owners in sharing of information on IPR infringement and their willingness to pursue their rights in court.



### C. STRENGTHENING INTELLECTUAL PROPERTY ENFORCEMENT COORDINATION

22. The above provisions of the law were later strengthened through a Gazette Notice Number 7270 of July 20, 2018, that created an inter-agency anti-illicit trade executive forum and technical working group, under the chairmanship of the principal secretary for the Department for Trade, co-chaired by the Kenya Association of Manufacturers with a secretariat from ACA.

23. The executive forum and the technical working group were greatly boosted when the then President formed a multi-agency enforcement team domiciled in his office. The Multi-Agency team was composed of 22 institutions from government and private sectors. The multi-agency was deemed necessary as the country took cognizance of the fact that counterfeiting is just one form of illicit trade and there was a dire need to bring together the National Intelligence Service (NIS), National Police Service, Financial Reporting Centre (FRC), Assets Recovery Agency (ARA) among others to coordinate issues of combating the vice. The organizations have a real-time National Illicit Trade Observatory where they share data with a view to have a sustainable attack on illicit trade in general and counterfeiting in particular<sup>6</sup>.

24. To address the negative public response linked to collaborative enforcement involving multiple agencies, during which the Authority faced allegations of unfairly targeting traders, the Authority decided to adopt a new approach. The goal was to tackle counterfeit goods at their origin. As a result, in 2021, the Authority introduced two regulations: the Anti-Counterfeit (Recordation) Regulations and the Anti-Counterfeit (Amendment) Regulations. These regulations granted the Authority the ability to commence a recordation procedure.

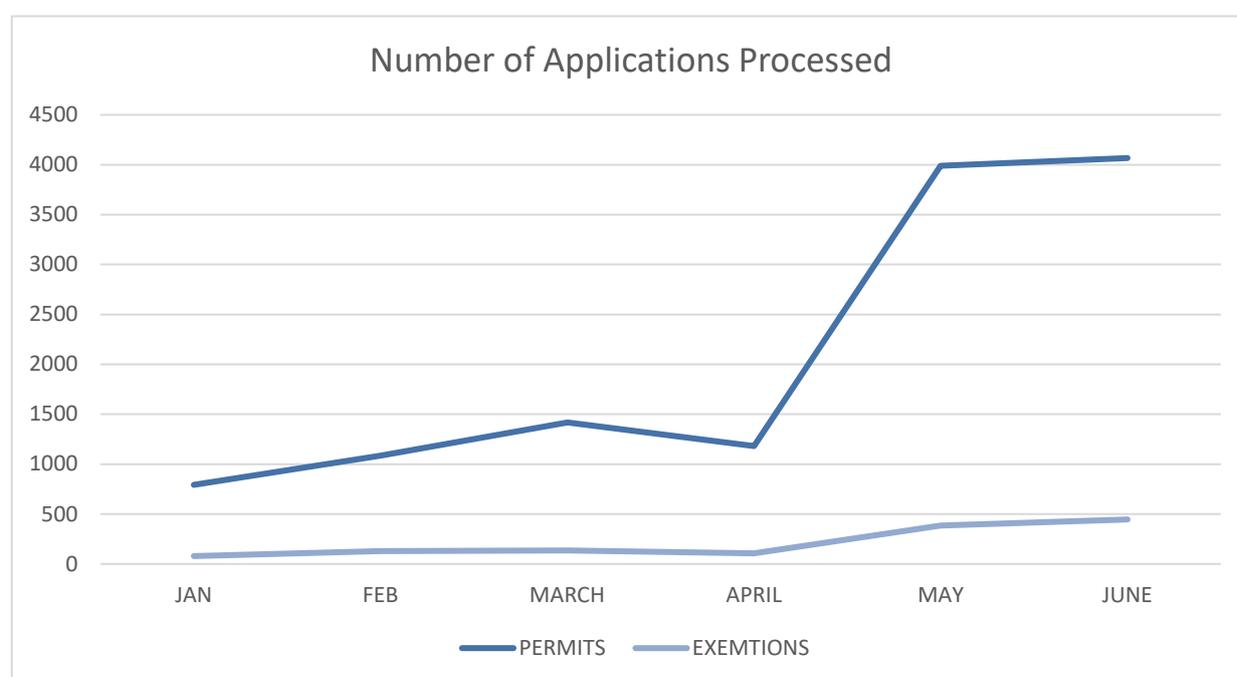
25. Recordation is a process of collecting and entering into an electronic database information from IPR owners regarding their registered IPRs, irrespective of their place of registration, for all

<sup>6</sup> See the portal at <https://www.illicittradeobservatory.go.ke/>.

goods being imported into Kenya. The process started in January 2023 and by end of July 30, 2023, the Authority had received 1,182 recordation applications of which 281 have been approved, 469 are still under review, 271 were sent back to the applicants to provide more information and 156 are pending payment of the requisite fees. This process is set to help the enforcement process as 80 per cent of counterfeit goods in Kenya are Imported<sup>7</sup>.

*Number of applications processed*

	JAN	FEB	MAR	APR	MAY	JUNE	TOTAL
PERMITS	793	1,085	1,418	1,181	3,990	4,067	12,534
EXEMPTIONS	79	128	135	107	385	446	1,280
TOTAL	872	1,213	1,553	1,288	4,375	4,513	13,814



#### D. SNARES AND CHALLENGES

**26.** In spite of the apparent feasibility of the current framework, it is important to acknowledge a range of challenges. For instance, the coordination of actions among different agencies faces obstacles due to communication barriers and difficulties in the exchange of pertinent information. Consequently, this situation leads to inefficiencies and a deficiency in timely responses. Another concern is the existence of overlapping jurisdictions, which not only creates

<sup>7</sup> Boniface Otieno, "Robi Njoroge: Anti-counterfeit boss on Kenya's plan to combat fakes at the source", The Business Daily, (January 27, 2023), available at: <https://www.businessdailyafrica.com/bd/corporate/boss-talk/robi-njoroge-anti-counterfeit-boss-on-kenya-s-plan-to-4100594>.

confusion but also has the potential to spark conflicts while attempting to ascertain which agency should take the lead in specific cases.

27. Moreover, the diverse nature of agencies involved introduces variations in priorities, approaches, and strategies aimed at combating counterfeiting. This diversity often results in clashes of interests and complicates the coordination process. Adequately allocating resources to each participating agency within the collaborative initiative presents a further hurdle. This encompasses challenges in terms of manpower, funding, technology, and the necessary equipment.

28. Furthermore, the process of decision-making becomes complicated when multiple agencies are engaged. This complexity renders it challenging to pinpoint the entity ultimately accountable for the actions taken or not taken. Consequently, a comprehensive strategy is required to address these challenges and facilitate effective coordination among the agencies involved.

## E. NEXT STEPS

29. The Authority is well anchored in law and works with the private sector to undertake evidence-based enforcement mechanisms. It is also exploring possibilities of developing and deploying Network File Systems and blockchain technologies to develop tamper-proof counterfeit protection stickers that will be used to seal authentic products and goods. The stickers when developed will be uncopyable and would also allow the use of USSD codes to geo-locate sites where counterfeit goods are bought hence helping in quick enforcement.

30. There are efforts to also advocate for an East Africa Community sub-regional anti-counterfeit policy and legislation. Such a policy when enacted will ensure that the member states can harmonize and coordinate in their anti-counterfeit strategies.

## II. CONCLUSION

31. Kenya is intensifying its fight against counterfeiting, driven by the surge in fake goods impacting its economy and citizens. The Anti-Counterfeit Authority (ACA), established in 2010 under the Anti-Counterfeit Act of 2008, has achieved significant milestones in its 13-year journey. With 2,232 IPR complaints, 429 prosecutions initiated, and counterfeit goods worth Ksh 3.4 billion (approximately USD 19.9 million) seized, ACA's multi-agency approach and collaboration with brand owners have proven effective.

32. To address challenges, ACA introduced innovative measures like the Anti-Counterfeit (Recordation) Regulations and Anti-Counterfeit (Amendment) Regulations, targeting the root of counterfeiting. Despite successes, obstacles remain, including communication barriers, jurisdiction overlaps, and diverse agency priorities. Kenya's unwavering commitment involves advanced technologies, regional policy exploration, and stakeholder collaboration.

33. As Kenya progresses, it seeks to streamline strategies, improve coordination, and fortify legal frameworks to mount a robust defense against counterfeiting, securing its economy, citizens, and intellectual property.

[End of contribution]

## RECENT OPERATIONS OF THE KOREA INTELLECTUAL PROPERTY OFFICE'S TECH POLICE: INTEGRATED REPORTING AND CONSULTATION CENTER AND JOINT INTERNATIONAL INVESTIGATION

*Contribution prepared by Mr. Bongsoo Lee, Investigator, Technology and Design Police Division, Korean Intellectual Property Office (KIPO), Daejeon, Republic of Korea \**

### ABSTRACT

The Special Judicial Police (SJP) of the Korean Intellectual Property Office (KIPO) is the investigative authority on trademark, patent, design, and trade secret infringement. Even as reports of IP infringement have rapidly increased, the SJP has continued to conduct effective enforcement activities resulting in increased arrests and strengthened IP rights protection.

To further enhance the SJP's investigative expertise, KIPO launched the Technology and Design Police Division ("Tech Police") in 2021. An Integrated Reporting and Consultation Center on IP infringement was established in 2022 to improve public services to deal with IP infringement. Furthermore, in 2023, KIPO began to conduct research for the establishment of a cooperative international network of investigative authorities, which is foundational for comprehensive IP enforcement. This contribution introduces the KIPO Tech Police operations as well as efforts to improve IP enforcement through the Integrated Reporting and Consultation Center and an international joint investigation system.

### I. THE KIPO TECH POLICE

1. The Korean Intellectual Property Office (KIPO) began operating the Special Judicial Police (SJP) division in September 2010 with duties of enforcing trademark infringement. In April 2019, the SJP Division became the Intellectual Property Police Division after receiving additional investigative authority over all intellectual property (IP) with the exception of copyright (which is under the jurisdiction of the Ministry of Culture, Sports and Tourism). By July 2021, the growing SJP was restructured according to IP fields, to form its own Trademark Police Division ("Trademark Police"), dedicated to trademark infringement, and a separate Technology and Design Police Division ("Tech Police"), dedicated to patent, design, and trade secret infringement.
2. The Tech Police offers a more specialized response by operating a total of five teams according to areas of expertise (chemistry, machinery, electronics, designs, and planned investigations). The investigators involved in enforcement are qualified as patent attorneys, lawyers or hold Ph.D. degrees in relevant fields and have experience in IP examination and trials.
3. Once a case is received through a formal complaint, report, or detection of an illegal activity, the Tech Police conducts its own investigation to decide whether to press charges before transferring the case to the Public Prosecutor's Office. From April 2019 to June 2023, the SJP investigated a total of 753 cases of patent, trade secret, and design infringement and arrested 1,613 suspects for criminal offenses.

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\* The views expressed in this document are those of the author and not necessarily those of the Secretariat or of the Member States of WIPO.

< Table 1 > Suspects arrested under criminal offenses by the SJP (Unit: People)

Category	April 2019	2020	2021	2022	June 2023	Total
Patent	95	170	169	156	68	658
Trade secret	20	39	85	62	56	262
Design	73	82	72	122	83	432
Other	12	82	50	44	73	261
Subtotal	200	373	376	384	280	1,613

4. Since the SJP began investigating patents, trade secret and design infringement in 2019, the number of arrests has almost doubled as of 2022 and an additional 280 people have been arrested in the first half of 2023 with the number expected to increase by the end of the year. While there are only 22 Tech Police personnel as of now to process the infringement cases, KIPO is in the process of working with relevant government ministries to expand the SJP.

## II. THE INTEGRATED REPORTING AND CONSULTATION CENTER FOR IP INFRINGEMENT

### A. LAUNCH OF THE INTEGRATED REPORTING AND CONSULTATION CENTER FOR IP INFRINGEMENT

5. As IP infringement-related reports and arrests increased, it was necessary to address issues of accessibility and consistency which came from multiple channels for reporting (e.g., through the SJP, the customer service center, the Civil Affairs Office, etc.), and periodic employee changes. To address this issue, the SJP consolidated reporting and consulting services and trained and designated expert consultants who can provide consistent services. In July 2022, the Integrated Reporting and Consultation Center on IP Infringement (hereinafter referred to as the “Reporting Center”) was launched to provide a single platform to submit reports and receive customized consultation according to IP fields.

### B. SUPPORT SERVICES OFFERED BY THE REPORTING CENTER

6. Key duties of the Reporting Center include providing support services for issues related to IP rights infringement and acts of unfair competition, enhancing guidance features to help meet requirements to start an investigation and monitoring the website to make the filing of complaints more convenient.

7. To better assist complainants, the Reporting Center employs dedicated staff that can provide information on relevant IP legislation and penalties, SJP investigation processes and instructions on how to draft a cease-and-desist letter and file a complaint, among other duties.

8. Sufficient guidance is provided to facilitate a swift investigation process, beginning at the reporting stage. The contents of reports are reviewed by staff in real time and a checklist is provided of the necessary evidence required to commence an investigation. In the case of trademark infringement, the Reporting Center will also cooperate with trademark holders to get a product appraisal of the alleged counterfeits product.

9. The website is continuously monitored to make it more convenient to file a report. For example, updates have been made for filing a detailed and clear report by separating the layout according to categories and indicating the specific information necessary, such as seller type (online/offline), name (company name), title, report link, submission of a sample product, etc.

### **III. JOINT INTERNATIONAL INVESTIGATION**

#### **A. RESEARCH EFFORTS FOR ESTABLISHING JOINT INTERNATIONAL INVESTIGATIONS**

10. Increasing instances of misappropriation of trade secret technology to overseas entities is a rising concern as it leads to national and economic loss. Unfortunately, there are many challenges to investigating trade secret misappropriation overseas or arresting suspects who flee to other countries. Therefore, the Tech Police began formally carrying out research to establish a joint international investigation system in December 2023.

11. A full-scale research project has been commissioned to analyze specific topics in more detail. Its work should be completed by December 2023. Firstly, the research will analyze the current situation of international leaks and theft of technologies by examining the definition and scope of protected technologies, the types of recent technology theft and the extent of damages.

12. Secondly, it will analyze domestic legislation related to international investigations (e.g., the Criminal Procedure Act, the Act on International Judicial Mutual Assistance in Criminal Matters, the Extradition Act, etc.), current agreements and basic principles of international treaties related to international investigations, as well as legislative systems related to international investigations (e.g., investigations with Interpol, etc.). There will be a focus on the legislation of countries in Asia, such as China and Thailand and Western countries, such as the United States., and European countries.

13. Thirdly, the research will review institutions for potential international joint investigations according to country and analyze actual international cases involving crimes such as patent infringement, illegal online gambling and child exploitation to identify methods for international joint investigations.

14. Lastly, the research will collect and analyze exemplary international joint investigations between key nations, including cases of joint investigations with China and Southeast Asian countries and with police agencies and Interpol, as well as the EU response through the Intellectual Property Crime Prevention Federation within Europol, etc.

15. Meanwhile, an advisory group on joint international investigations of technology leaks was formed in May 2023 and has been regularly holding advisory meetings. Members consists of academics, police officers, lawyers, etc. with direct or research experience in international investigations. They are studying and advising on methods of cooperation with foreign police for locating and summoning a suspect in a foreign country or when the suspect is a foreigner, as well as advising on current investigations.

#### **IV. CONCLUSION**

16. Utilizing technical and legal specialization gained through patent examination and trial experience, the Tech Police has brought about significant outcomes through its effective investigative operations. As at June 2023, a total of 1,613 suspects have been arrested for crimes related to patents, designs and trade secrets. With more people willing to report crimes related to technology infringement and leaks, it became necessary to provide convenient access to support and assistance through a single platform, leading to the launch of the Integrated Reporting and Consultation Center on IP Infringement in July 2022. Furthermore, to overcome the challenges of enforcing against overseas technology leaks and other cross-border crimes, KIPO's comprehensive research project will be used to establish a cooperative system of enforcement authorities for joint international investigations. Together with the expertise of the Tech Police, this international system will facilitate the swiftness and effectiveness of investigations. By undertaking such activities, KIPO will be able to strengthen its enforcement activities and help right holders better protect their IP.

[End of contribution]

## COORDINATING THE ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS IN SAUDI ARABIA

*Contribution prepared by Mr. Yasser al-Debassi, Executive Director, IP Respect Department, Saudi Authority for Intellectual Property (SAIP), Riyadh, Saudi Arabia\**

### ABSTRACT

This paper looks at how the Saudi Authority for Intellectual Property (SAIP) is striving to enhance the enforcement of intellectual property (IP) rights. It is doing so by working in coordination with relevant Government bodies, partnering with the private sector and intermediaries and boosting the enforcement role of rights holders and their representatives. The focus is on a coherent, integrated and standardized approach to the ongoing development of the IP enforcement system in Saudi Arabia. A variety of initiatives have been conducted to that end, including the establishment of the Standing Committee on IP Rights Enforcement and the IP Respect Council initiative. This contribution provides an overview of these initiatives, including their purpose, functions, objectives and achievements.

### I. THE STANDING COMMITTEE ON IP RIGHTS ENFORCEMENT

1. The Standing Committee on IP Rights Enforcement was established by high decree on the basis of a proposal of the Saudi Authority for Intellectual Property (SAIP) and was approved by the latter's Board of Directors. It is a key part of the SAIP's IP Respect Department, the mission of which is to strengthen the enforcement system, refine its working methods and procedures, create synergies between government and other national IP enforcement bodies and bring the system up to a level commensurate with the country's standing. The Committee, which is chaired by SAIP, comprises 13 government enforcement agencies. The Authority constantly monitors its performance with a view to improving its efficiency and ensuring that it achieves its goals in terms of improved enforcement.

#### A. FUNCTIONS OF THE COMMITTEE

2. The Committee has various functions to reach its goal of making the enforcement system work better. These include:

- Proposing national programs and initiatives to ensure the enforcement of IP rights, identifying related policies, objectives, plans and performance indicators, monitoring the implementation of the steps required to achieve those objectives jointly with the agencies concerned and verifying their outcome and effectiveness.
- Monitoring measures taken by enforcement agencies to enforce IP rights and proposing ways of improving them and the appropriate mechanism for doing so.
- Coordinating strategically with enforcement agencies to plan, conduct and monitor the impact of national campaigns and programs to combat the infringement of IP rights.

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- Conducting studies with enforcement agencies on the deterrent impact of sanctions on infringers and the adequacy of remedies made available to rights holders who fall victim to infringements, and making recommendations to the relevant body.
- Working with enforcement agencies on proposals for a suitable IP alternative dispute resolution mechanism.
- Drafting, in conjunction with the relevant authorities, regulations on IP rights enforcement and submitting them for inclusion in current legislation.
- Developing a procedural guide to raise awareness among IP rights holders and beneficiaries of how enforcement works and submitting it for adoption.
- Coordinating work to build an electronic database, overseeing the Authority's enforcement platform, liaising with enforcement agencies and sharing relevant data in order to facilitate access to accurate, confidential and real-time information needed to monitor and support the enforcement of IP rights and enhance performance.
- Creating a database of national statistics and studies and IP-related publications and scientific literature.
- Devising special development and training programs for IP rights enforcement and monitoring their implementation with a view to filling qualifications gaps and improving administrative and technical efficiency in the enforcement system.
- Establishing subcommittees and task forces to conduct some of the Committee's tasks.
- Reaching out to the private sector, associations, non-profit institutions, consultancies and local and international experts in pursuit of the Committee's goals in terms of improving the standard of IP rights enforcement.
- Drafting periodical reports and statistical surveys on the enforcement system's performance, identifying and analyzing issues arising in that regard and finding appropriate solutions to address them through the competent authorities.
- Liaising and coordinating with other IP rights enforcement agencies at home and abroad.

## B. STRATEGIC GOALS OF THE COMMITTEE

3. Through the Committee, the Authority aims to meet a series of strategic goals that go beyond the Committee's afore-mentioned functions, namely:

- Enhancing working methods and procedures and creating corresponding electronic systems.
- Leveraging synergies between enforcement agencies.
- Building strategic IP partnerships.
- Promoting respect for IP rights.
- Establishing new national initiatives and programs to facilitate cohesion in the country's enforcement system.

### C. ENFORCEMENT AGENCIES REPRESENTED ON THE COMMITTEE

4. The Committee comprises 13 IP rights enforcement agencies: SAIP; the Ministry of Justice; the Office of the Public Prosecutor; the General Directorate of Public Security; the Ministry of Information; the Zakat, Tax and Customs Authority; the Ministry of Commerce; the Communications and Information Technology Authority; the General Commission for Audiovisual Media; the Saudi Food and Drug Authority; the Ministry of Sport; the Federation of Saudi Chambers; and the Center for Research and Intercommunication Knowledge.

### D. WORKING METHODOLOGY OF THE COMMITTEE

5. Inputs the Committee receives include:

- Analyses of the current operational status of the enforcement system, formerly conducted by SAIP experts.
- Outcome documents, recommendations and proposals emerging from board meetings of the IP Respect Council.
- Reports on obstacles encountered by IP Respect Council experts in the course of their work.
- Feedback from businesses, rights holders, intermediaries and IP users.

### E. ACCOMPLISHMENTS OF THE COMMITTEE

- Creation of mechanisms to render more effective efforts to combat the transnational trade in counterfeit goods, including regular updates to suspicion standards, in cooperation with the Zakat, Tax and Customs Authority.
- Greater commitment by public and private sector actors to respect IP laws and regulations through the initiative to appoint IP respect officials.
- Coordination with national digital content monitoring bodies, such as the Communications and Information Technology Authority, to streamline the processes for taking down websites that infringe IP rights.
- Identification of areas of overlap between the agencies on the Committee and the roles of each in enforcing IP rights, with a view to enhancing coordination between them.
- Establishment of joint task forces and expert committees to study specific issues relating to IP infringements with a view to obtaining tough sentences for infringers and thereby meeting the goals of the enforcement system.
- Conducting in conjunction with member agencies of the Committee, joint awareness-raising campaigns on the importance of respecting IP rights and the impact of infringement of those rights on individuals and society as a whole<sup>8</sup>.
- Adoption of expedited procedures for obtaining search warrants from the Office of the Public Prosecutor in order to ensure timely inspection visits that allow for the seizure of goods in breach of IP laws and regulations.

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<sup>8</sup> <https://www.saip.gov.sa/en/information-center/#reports>.

## II. THE INTELLECTUAL PROPERTY RESPECT COUNCIL INITIATIVE

6. In order to involve the private sector, SAIP has established several initiatives including the IP Respect Council Initiative was launched to encourage the private sector to play a more active role, obtain greater insight into the difficulties facing the private sector and rights holders, promote transparency between the public and private sectors, and coordinate efforts to improve compliance with the laws and regulations. Other aims include showcasing the Authority's current initiatives, taking up and refining rights holders' visions with a view to meeting their ultimate goal of reducing counterfeiting and piracy, bringing together rights holders (or their representatives) from different sectors to discuss problems and how to resolve them, and encouraging the relevant government actors to work with the Authority to facilitate the protection of rights holders and raise awareness of IP. Some 18 IP Respect Councils have been held, with meetings targeting the industry, retail, information technology (IT) and software, sports clubs, and artistic and literary sectors. Since its establishment in 2020, the IP Respect Council's business model establishes a productive framework through a meticulous process and methodology for each council. SAIP evaluates the industry's landscape to determine the council's focus. Once a council is selected, SAIP convenes all relevant government entities, private sector representatives, and rights holders to collaborate on identifying and resolving challenges with effective and efficient solutions.

### A. GOALS

7. The goals of the IP Respect Council initiative include:

- Encouraging the private sector to play a more active part in enforcement.
- Promoting communication and transparency between the public and private sectors.
- Keeping abreast of the latest developments in all areas of interest and concern to the Authority.
- Understanding the problems and challenges facing the private sector with regard to IP and working together to resolve them.

8. The Authority also envisages using the IP Respect Council to work with various sectors and provide them with an environment conducive to investment. They can be broken down as follows:

- Industrial sector: pharmaceuticals, food industry, other industries (types of industry).
- Retail sector: garments, perfumery, electronic devices.

9. Themes for the councils and sectors targeted have been selected based on granular analysis of expert studies. Sectors covered thus far have included pharmaceuticals, publishing, audiovisual, software and IT, sports clubs, lubricants and base oil, vehicles and spare parts, small and medium-sized enterprises, gold and jewelry, architectural and engineering design, manufacturing brands and company identity and filmmaking.

## B. ACHIEVEMENTS AND OUTCOMES

10. Bearing in mind the overall aim of enhancing the enforcement of IP rights and harmonizing public and private sector efforts in that regard, the holding of IP Respect Councils serves as a lever for coordination between Authority members and the private sector to boost the latter's role and encourage it to work together with enforcement agencies to protect IP rights. Outcomes of the Councils held thus far include:

- Coordination with the sports sector and sports clubs to register, protect and manage assets and to maximize impact. As a result of that coordination:
  - a dedicated working group has been set up to help sports teams to register, protect and manage their IP assets, and
  - IP awareness questionnaires are being compiled.
- Establishment of a working group on programming and electronic licensing, composed of government and private sector representatives and other related stakeholders, to identify and address challenges and promote common cooperation frameworks.
- Coordination of efforts by relevant government agencies, rights holders, legitimate online platforms, service providers and intermediaries, with the objective of improving IP rights protection in the digital space and combating abuses by pirate platforms and streaming sites, to actively monitor infringements and streamline procedures for taking down pirate websites.
- Coordination between the Authority and other relevant bodies, rights holders and intermediaries, which has resulted in streamlined procedures for the prompt removal of infringing content from the Internet and more active content moderation and removal by online platforms themselves.
- Analysis of the challenges relating to IP rights enforcement that are faced by trademark offices and agents and how to tackle them through an overhaul of the requirements for filing IP infringement claims use of Council meeting outcomes as the basis for updating electronic systems.

## III. LESSONS LEARNED

- The need to review and update IP enforcement laws in a way that reflects changes in the field of IP and to ensure that they provide for deterrent penalties and mechanisms for their application.
- The need for IP enforcement agencies to coordinate positively to streamline and expedite enforcement procedures.
- The importance of coordinating and partnering with rights holders, intermediaries and the public and private sectors in order to facilitate the enforcement of IP rights.
- Acknowledgment of the key role played by efforts to raise awareness of IP rights laws and how they can help to increase compliance and curb infringements.
- The need for actors in the system to share information in order to build a database for use in the conduct of studies and analysis, and to pinpoint best practices for curbing infringements of IP rights.

- The importance of assessing the performance of the IP enforcement system, addressing the challenges it faces and constantly reviewing and developing its working methods and procedures.

[End of contribution]

## THE EXPERIENCE OF THE UGANDA REGISTRATION SERVICES BUREAU IN COORDINATING INTELLECTUAL PROPERTY ENFORCEMENT

*Contribution prepared by Ms. Mercy K. Kainobwiso, Registrar General, Uganda Registration Services Bureau, Kampala, Uganda\**

### ABSTRACT

The Uganda Registration Services Bureau (URSB) established an in-house Enforcement Unit in 2016 with the objective of ensuring effective enforcement of intellectual property rights. This contribution outlines the structure of the Enforcement Unit, the process and the factors leading to its establishment, as well as an overview of its structure. Additionally, the contribution covers the achievements of the Enforcement Unit, as well as some of the challenges it has faced and certain improvements it plans to make in the future.

### I. INTRODUCTION

1. The Uganda Registration Services Bureau (URSB) is the national intellectual property (IP) office responsible for registration of intellectual property rights (IPRs). URSB has contributed to the development of innovative strategies that address components of the IP value chain, namely generation, protection, commercialization and enforcement of IPRs, by establishing the appropriate infrastructure *and* developing human capital in the IP system.

2. In December 2016, URSB established an in-house Enforcement Unit (the Unit) to support the efficient and effective enforcement of IPRs through investigations and prosecutions of IP-related offenses and seizure of counterfeit and pirated goods in the Ugandan market. This was achieved by strengthening cooperation and coordination with State and non-State actors.

3. The Unit, which has registered tremendous successes over the years, is housed within the premises of URSB. It is composed of police officers on secondment from the Uganda Police Force and public prosecutors who are annually licensed by the Director of Public Prosecutions (DPP).

### II. FACTORS LEADING TO THE CREATION OF AN INTELLECTUAL PROPERTY ENFORCEMENT COORDINATION BODY

4. Before the creation of the Unit, there were rampant violations of IP laws, which inhibited innovation and creativity, discouraged investments and caused revenue loss for the Government.

5. This was characterized by the lack of appreciation of IP laws among key stakeholders. Resolution and disposal of IP criminal proceedings were slow owing to limited technical expertise amongst judicial actors.

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6. Furthermore, Uganda has porous borders, which increased the proliferation of IP-infringing goods entering the Ugandan market. The Customs Department of the Uganda Revenue Authority lacked access to essential information on IP rights to be able to curb IP crime.

7. Several State and non-State actors, including IP right holders, were working in silos, which made it easier for infringers to remain undetected and unpunished.

8. URSB then worked with the creative sector, specifically musicians and film producers, to put in place effective enforcement mechanisms. The purpose was to build respect for IP rights by creating an environment that encourages compliance with the existing legal and policy frameworks by fostering inter-agency cooperation, collaborative public-private partnerships, training key stakeholders and creating awareness of IP rights and laws.

### **III. THE PROCESS OF ESTABLISHING YOUR NATIONAL INTELLECTUAL PROPERTY ENFORCEMENT COORDINATION MECHANISM**

9. To set up the Enforcement Unit, URSB signed Memoranda of Understanding (MOU) with various Government agencies. The MOUs specified the strategic objectives, joint activities to be undertaken, roles and duties of the parties, methods of work and reporting mechanisms.

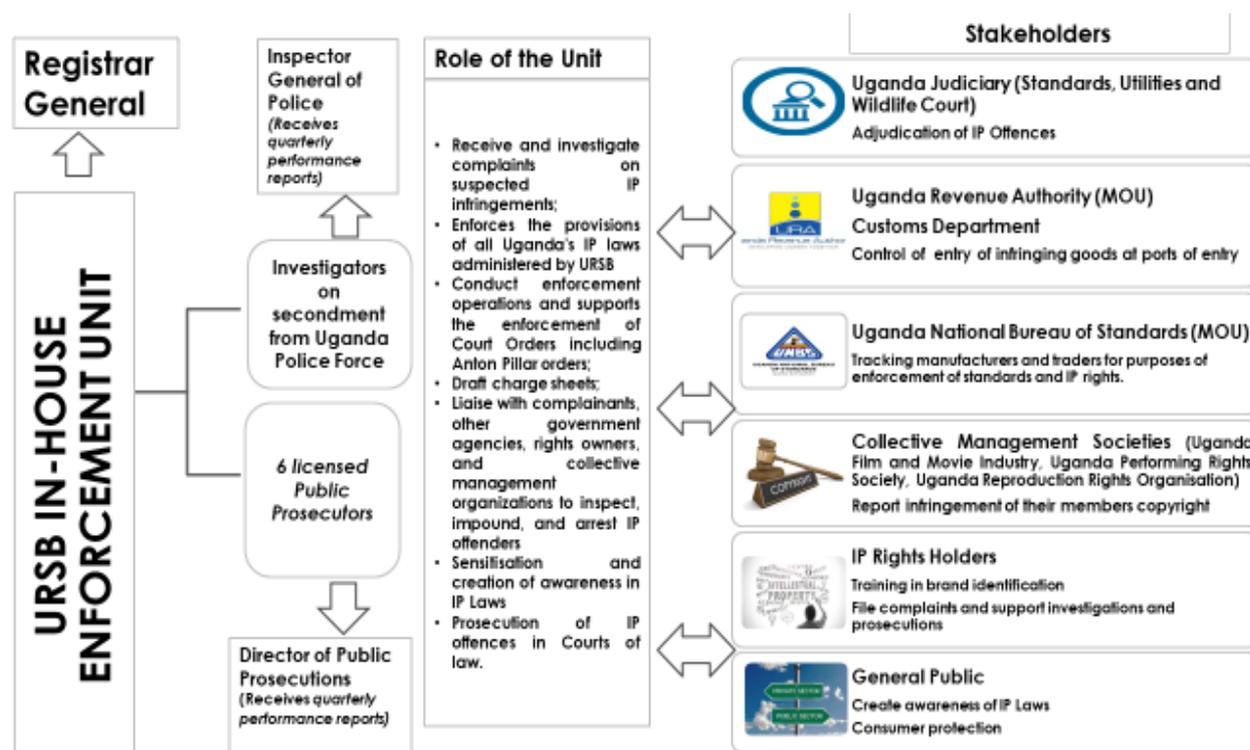
- In 2016, URSB signed an MOU with the Uganda Police Force, which saw the secondment of police officers to the Enforcement Unit to facilitate the investigation of IP offences. The police officers were later appointed as trademark and copyright inspectors with statutory powers to enter any premises or vehicle and seize items reasonably suspected to be an infringement of IP rights.
- In 2018, URSB signed an MOU with the Uganda National Bureau of Standards to provide a framework for cooperation in enforcement of standards and protection of IP rights.
- In 2021, URSB signed an MOU with the Office of the Directorate of Public Prosecutions (DPP) to strengthen the ability of URSB to prosecute IP offenses. Following the signing of this MOU, the DPP appointed six public prosecutors from URSB to handle all criminal cases arising out of the IP laws administered by the Bureau.
- In 2021, the URSB signed an MOU with the Uganda Revenue Authority to strengthen the enforcement of IP rights through effective border control measures.

10. The main resistance the URSB has encountered has come from external parties engaged in counterfeiting and piracy. This resistance persists because those involved in the crime do not think it is criminal.

11. To achieve the inter-agency cooperation framework, URSB held one-on-one engagements with key stakeholders to get their buy-in. Focus was placed on their value addition and on what mutual success would look like for all parties involved.

12. The formulation of the National Intellectual Property Policy of 2019 also helped garner political support as the Government provided direction on the role of each ministry, department or agency that had been mapped out in transforming the IP landscape in Uganda.

#### IV. OVERVIEW OF URSB'S STRUCTURE



Source: URSB

13. Save for the judiciary, the collaborative Government agencies participate in joint awareness initiatives, planning and execution of enforcement operations.

14. The URSB Enforcement Unit holds monthly meetings to discuss IP enforcement implementation strategies, whereas those with stakeholders who are not housed within URSB premises are held on notice, on an as-needed basis.

15. The police investigators and public prosecutors of URSB (who are all lawyers/ advocates) routinely receive refresher training on IP from the IP Registration Directorate of URSB.

#### V. RATIONALE FOR THE STRUCTURE OF THE COORDINATION BODY

16. The purpose of having different agencies under one roof (the one-stop shop model) was to reduce the time and cost IP right holders spend in seeking legal redress. Public prosecutors can supervise the police officers in criminal investigations and enforcement operations, ensures that the right charges are brought against accused persons and the right evidence is gathered for the court trial. This one-stop shop model also ensures that court judgements like destruction orders for IP-infringing goods are enforced in time as public prosecutors perform the destruction process jointly with the police officers.

17. The purpose of requesting the DPP to appoint some public prosecutors within URSB was to reduce the strain on the DPP's limited human resources and allow some URSB lawyers/advocates to handle IP cases since they possess the professional expertise on copyright and trademark infringements.

## **VI. STAKEHOLDERS INVOLVED**

18. While developing URSB's second Strategic Development Plan, which covered the period 2017/2018 to 2019/2020 and its third Strategic Plan, which covers the period 2020/2021 to 2024/2025, URSB conducted a stakeholder mapping exercise which helped to identify and understand whom to engage in the IP industry, how to engage, when to engage, and why to engage them.
19. The Uganda Police Force was involved because they have a statutory mandate of enforcing law and order.
20. The Office of the Directorate of Public Prosecutions was involved because they play a key role in instituting criminal proceedings in civilian courts of law.
21. The Uganda Revenue Authority was involved because they have a statutory mandate to curb entry of IP infringing goods at Uganda's entry ports.
22. The Uganda National Bureau of Standards was involved because they are pivotal in product certification and can support IP rights enforcement by notifying the URSB of suspected IP-infringing goods which they encounter in the course of work.
23. The inclusion of the URSB as one of the users of the specialized courts, the Standards Utilities and Wildlife Court, to adjudicate IP offences considerably reduced the time and costs which would have been involved in traversing the whole country to access different courts. This also helped fast-track IP criminal cases.
24. The URSB cooperates with the private sector in product identification once they report an IP violation to the Enforcement Unit and in testifying as key witnesses in court in the event of a trial.
25. The URSB supports Collective Management Organizations (CMOs) in enforcing the copyright and related rights of their members and capacity building for copyright inspectors from CMOs that are pivotal in IP enforcement.

## **VII. GAINING "BUY-IN" OF RELEVANT STAKEHOLDERS**

26. The URSB gained buy-in through active engagement with key stakeholders on the benefits of protecting IP rights as part of Uganda's long-term transformative agenda of improving household incomes, the health and safety hazards associated with consuming counterfeits and pirated goods which directly affected them and the need for a multi-sectoral approach in building respect for IP in Uganda. The established relationships were later formalized through MOUs and joint implementation plans prepared with the stakeholders.
27. The formulation of the National Intellectual Property Policy of 2019 also brought key stakeholders on board as it demonstrated the commitment of the Government in protecting IP rights in Uganda.
28. The 100 per cent successful prosecution rate of the Enforcement Unit also helped to build public confidence in the URSB.

Financial year		2016/ 2017	2017/ 2018	2018/ 2019	2019/ 2020	2020/ 2021	2021/ 2022	2022/ 2023
<b>Complaints received</b>	Trademark infringement	23	32	44	31	53	61	32
	Copyright infringement	8	12	18	23	8	8	9
	Industrial designs	1	2	0	0	0	0	0
	<b>Total number of complaints</b>	<b>32</b>	<b>46</b>	<b>62</b>	<b>54</b>	<b>61</b>	<b>69</b>	<b>41</b>
<b>Cases handled in court</b>	Trademark infringement	2	4	5	8	18	17	22
	Copyright infringement	2	2	4	2	2	2	0
	Industrial designs	0	0	0	0	0	0	0
	<b>Total number of prosecuted IP cases</b>	<b>4</b>	<b>6</b>	<b>9</b>	<b>10</b>	<b>20</b>	<b>19</b>	<b>22</b>
<b>Concluded cases</b>	<b>Number of convictions</b>	<b>4</b>	<b>6</b>	<b>9</b>	<b>10</b>	<b>20</b>	<b>18</b>	<b>18</b>
	Reconciliation	0	0	0	0	0	1	1
	Criminal proceedings stayed pending determination of case in civil court	0	0	0	0	0	0	3

*Performance statistics for criminal cases prosecuted by URSB over a seven-year period*

29. In obtaining buy-in from the relevant stakeholders, the following challenges were encountered:

- lack of respect for IP rights, as shown by high levels of counterfeiting and piracy;
- limited awareness of IP laws; and
- limited human and financial resources to carry out countrywide enforcement activities.

## **VIII. GREATEST ACHIEVEMENTS OF THE INTELLECTUAL PROPERTY ENFORCEMENT COORDINATION BODY**

30. Since December 2016, the Unit has seized infringing goods and saved right holders approximately 69.5 billion Uganda shillings (approximately 19 million US Dollars) through the enforcement operations. The seized items are destroyed after criminal proceedings are completed and the cost of destruction is borne by the infringer. This has helped in building respect for IP by deterring potential offenders from dealing with counterfeits and pirated works. The seized items included pirated books and CDs; and counterfeit foodstuffs like rice, maize shillfuel lubricants, razor blades, hair products and agricultural products.

31. To build the capacity of key players in the criminal justice system to effectively handle IP crimes, the Unit organized targeted IP enforcement training for judicial officers, state attorneys and high-ranking officers of the Uganda Police Force. IP right holders can now seek remedies from trained law enforcement officials because they understand IP from the perspective of protecting against the violation of a person's legal right to property. The trained officials were also equipped with compendiums of IP laws for future reference.

32. The Unit has supported CMOs to enforce the rights of their members through spot compliance inspections of users of their members' protected works.

33. The Bureau's Public Prosecutors won all its cases, which has enhanced public confidence in the Unit and enabled a change of mindset in the public.

34. Partnerships with key stakeholders in the fight against economic crime and illicit trade were strengthened. The Unit has established formal collaboration links through MOUs and conducted joint enforcement operations with other Government agencies.

## **IX. OBSTACLES TO ESTABLISHING THE INTELLECTUAL PROPERTY ENFORCEMENT COORDINATION BODY**

35. URSB experienced the following obstacles:

- low appreciation of IP;
- porous borders, poorly funded enforcement bodies and the attitude of consumers who prefer buying imitations because they are cheaper;
- inadequate budget for enforcement operations;
- the budget for enforcement operations is too low to fund all enforcement activities countrywide so the URSB relies on collaboration with the private sector and other Government agencies to leverage resources;
- the unit lacks adequate space to store items seized during enforcement operations, which sometimes interferes with the preservation of evidence and increases costs when additional storage space needs to be hired;
- low staffing levels in the Unit;
- the human resources of the Unit are still insufficient to cover the whole business sector and carry out enforcements countrywide;
- there is a lack of specialized training for staff in the Unit;
- staff need constant training and professional development to keep up with the emerging counterfeiting and piracy trends;
- punitive penalties provided for under the law are not deterrent enough; for example, under the Copyright and Neighboring Rights Act, 2006, the maximum fine payable in infringement matters is 120 currency points (two million four hundred thousand Uganda shillings); the URSB is in the process of amending the Copyright and Neighboring Rights Act, 2006 to provide for more punitive and deterrent penalties against pirates;
- current offences do not consider the emerging digital trends and the need to revise them in line with the treaties ratified; and
- there is a challenge of protection of foreign works in the absence of reciprocal agreements with foreign CMOs and therefore such matters are difficult to prosecute. Empowering CMOs with legislative support, such as the presumption of representation can aid in ensuring the successful prosecution of such matters.

36. These obstacles have been addressed in the following ways:

- continuous public awareness drives on IP rights and their protection through print, broadcast and social media;
- continuous capacity building of police officers, judicial officers and state attorneys across Uganda as a way of boosting the skills set of officers handling IP cases;
- prosecutors can request the court to order the destruction of infringing items so that room for more suspected infringing goods is created in the subsisting storage room; and
- the unit has made proposals for legal reform in upward revision of penalties and sanctions for IP offences.

**X. WHAT ARE SOME IMPROVEMENTS, IF ANY, THAT YOU PLAN TO IMPLEMENT IN THE FUTURE?**

37. Under policy objective 3(d) of the Uganda National IP Policy, the URSB will ensure effective IP rights enforcement through:

- building synergies between academia, Government departments/agencies and the private sector to ensure compliance with IP legislations and regulations;
- application of transparent and effective procedures and penalties for IP rights violations;
- strengthening the justice, law and order sector for more active participation in enforcement of legislation and regulations, particularly prosecution of IP rights disputes and violations;
- facilitating the establishment of IP right holders' associations to advocate for continuous improvements in IP enforcement;
- Developing and implementing effective IP enforcement training and related capacity building programs for the police, lawyers, public prosecutors, judges, customs officers and the public;
- establishment of infrastructure and mechanisms to enable IP enforcement officers recognize and differentiate IP-infringing products and services;
- establishment of capacity building cooperation mechanisms between local IP enforcement agencies and regional/international IP enforcement organizations; and
- reforming the IP laws to strengthen the fines and penalties for IP crimes.

**XI. WHAT ADVICE TO YOU HAVE FOR OTHER COUNTRIES DESIRING TO CREATE AN INTELLECTUAL PROPERTY ENFORCEMENT COORDINATION BODY?**

38. The utilization of already existing law enforcement structures in their jurisdictions to create an enforcement coordination body goes a long way in leveraging resources in IP protection.

39. As a priority, the capacity of all key stakeholders needs to be strengthened to achieve optimal results in IP enforcement.

## **XII. CONCLUSION**

40. Efficient and effective enforcement of IP rights requires the concerted efforts of critical stakeholders. The recognizable success of the URSB's Enforcement Unit can be attributed to the existence of strong political will to fight counterfeit and pirated goods, a comprehensive legal, policy and institutional IP framework, effective stakeholder collaboration and cooperation, continuous training of law enforcement officials on IP related issues and consistent education of the public on IP matters.

[End of contribution]

## INTELLECTUAL PROPERTY ENFORCEMENT COORDINATION IN THE UNITED STATES OF AMERICA

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### ABSTRACT

The United States has had a coordinative body on intellectual property, in some form, since 1999. The current structure – the Office of the Intellectual Property Enforcement Coordinator (IPEC) – was established in 2008 to advise the President and coordinate with Cabinet departments and agencies on the development of the United States' overall intellectual property policy and strategy, to promote innovation and creativity and to ensure effective intellectual property protection and enforcement, domestically and abroad.

Working with many department and agency heads within the administration, the IPEC, among other things, coordinates the development of a Joint Strategic Plan on Intellectual Property Enforcement and reports to the President and Congress on domestic and international intellectual property enforcement programs.

The Office of the IPEC also regularly works with the United States Government (USG) IP interagency, including the National Intellectual Property Rights Coordination Center, as part of a “whole of government” approach to IP enforcement.

### I. HISTORY OF THE INTELLECTUAL PROPERTY COORDINATOR POSITION IN THE UNITED STATES OF AMERICA.

1. The interagency National Intellectual Property Law Enforcement Coordination Council (NIPLECC) – an early predecessor to today's Office of the Intellectual Property Enforcement Coordinator (IPEC) – was established by statute in September 1999, in Section 653 of the fiscal year (FY) 2000 Treasury and General Government Appropriations Act (P.L. 106-58). The statute was codified at 15 U.S.C. § 1128. During funding discussions, the Senate Appropriations Committee recognized the dramatic impact crimes involving the infringement of intellectual property rights have upon the U.S. economy and noted that more can be done to combat this burgeoning criminal enterprise, and that coordination among local, state and foreign law enforcement entities is essential.

2. According to the statute, the Council was co-chaired by officials at the Commerce Department and the Justice Department: the Assistant Secretary of Commerce and Commissioner of Patents and Trademarks, and the Assistant Attorney General for the Justice Department's Criminal Division. Other members included the Under Secretary of State for Economic and Agricultural Affairs, the Ambassador – Deputy United States Trade Representative, the Commissioner of Customs, and the Under Secretary of Commerce for International Trade. Consultation with the Copyright Office was also required on law enforcement matters relating to copyright and related rights.

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\* The views expressed in this document are those of the author and not necessarily those of the Secretariat or of the Member States of WIPO.

3. The Council, which was established to coordinate domestic and international intellectual property law enforcement among federal and foreign entities, issued an annual report on its coordination activities to the President, and to the Committees on Appropriations and on the Judiciary of the Senate and the House of Representatives.

4. In 2004, the NIPLECC statutory framework was amended in the FY 2005 Consolidated Appropriations Act, P.L. 108–447. Among other things, the 2004 statute created the Presidentially-appointed position of the Coordinator for International Intellectual Property Enforcement (which was placed in the Commerce Department) and further defined the role of the NIPLECC to include promulgating a strategy for protecting American intellectual property overseas.

5. IPEC, as it is known today, was established by Title III of the Prioritizing Resources and Organization for Intellectual Property Act of 2008, Public Law 110-403 (“the PRO IP Act”; see 15 U.S.C. §§ 8111-8116). IPEC replaced NIPLECC and the Coordinator for International Intellectual Property Enforcement. In 2009, President Obama nominated the first IPEC, who was confirmed by the Senate later that year.

## II. OFFICE OF THE INTELLECTUAL PROPERTY ENFORCEMENT COORDINATOR

6. Pursuant to 15 U.S.C. § 8111, the Intellectual Property Enforcement Coordinator is nominated by the President and confirmed by the Senate. And, whereas the Coordinator for International Intellectual Property Enforcement was in the Commerce Department, Congress placed the IPEC within the Executive Office of the President (EOP). The EOP is the group of White House offices that supports the President and the Vice President and includes such offices as the National Economic Council, the US Trade Representative, the Office of Science and Technology Policy, and the Office of Management and Budget, among others.

7. The legislative history of the PRO IP Act discusses the importance of placing the IPEC in the Executive Office of the President, so that the Coordinator has an elevated visibility and access that will provide a more effective executive branch voice on IP enforcement<sup>9</sup>.

8. Per statute, the duties of the IPEC include: (a) chairing an interagency intellectual property enforcement advisory committee; (b) coordinating the development of a Joint Strategic Plan on Intellectual Property Enforcement; (c) assisting, at the request of departments and agencies in the implementation of the Joint Strategic Plan; (d) facilitating the issuance of policy guidance to departments and agencies, to the extent necessary to assure the coordination of intellectual property enforcement policy and consistency with other law; (e) reporting to the President and Congress on domestic and international intellectual property enforcement programs; (f) reporting to Congress on the implementation of the Joint Strategic Plan, and making recommendations, if any and appropriate, to Congress for improvements in Federal intellectual property laws and enforcement efforts; and (g) carrying out such other functions that the President directs<sup>10</sup>.

9. It is important to note that the IPEC may not control or direct any law enforcement agency, including the Department of Justice, in the exercise of its investigative or prosecutorial authority<sup>11</sup>.

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<sup>9</sup> 154 Cong. Rec. S9590 (daily ed. Sept. 26, 2008) (statement of Sen. Voinovich).

<sup>10</sup> 15 U.S.C. 8111(b)(1).

<sup>11</sup> 15 U.S.C. 8111(b)(2).

## A. JOINT STRATEGIC PLAN ON INTELLECTUAL PROPERTY ENFORCEMENT

10. As discussed more in 15 U.S.C. § 8113, the IPEC is tasked with the development of a Joint Strategic Plan on Intellectual Property Enforcement (JSP). The JSP, which is developed through work with the USG IP-interagency and through the input of the private sector, is released roughly every three years.

11. The purpose of the plan is identify ways to: reduce the amount of counterfeits and other infringing goods in the domestic and international supply chain; identify and address structural weaknesses, systemic flaws, or other unjustified impediments to effective enforcement action against the financing, production, trafficking, or sale of counterfeit and infringing goods; strengthen the capacity of other countries to protect and enforce intellectual property rights, and reduce the number of countries that fail to enforce laws preventing the financing, production, trafficking, and sale of counterfeit and infringing goods; and work with other countries to establish international standards and policies for the effective protection and enforcement of intellectual property rights<sup>12</sup>.

12. Four Joint Strategic Plans have been issued in 2010, 2013, 2016, and 2020, which are available on our webpage at <https://www.whitehouse.gov/ipec/reports-and-documents/>.

## B. ANNUAL REPORT TO CONGRESS

13. As discussed more in 15 U.S.C. § 8114, the IPEC is required to submit an annual report to Congress on the USG's IP enforcement activities for a given fiscal year. The most recent report, issued in April 2023, included submissions from the Departments of Agriculture, Commerce (including the USPTO), Defense, Health and Human Services, Homeland Security, Justice, State, and Treasury, as well as the U.S. Copyright Office and USTR.

14. The most recent IPEC Annual Intellectual Property Report to Congress<sup>13</sup> and previous reports are available on our webpage<sup>14</sup>.

## III. "WHOLE OF GOVERNMENT" APPROACH TO INTELLECTUAL PROPERTY ENFORCEMENT COORDINATION

15. The United States seeks to bring broad coordination and collaboration to IP enforcement policy at the national level. This involves minimizing duplication of efforts, maximizing the impact of the USG's enforcement activities (including through collaborative activities), and affirmatively identifying and implementing ways to strengthen IP enforcement. This "Whole of Government" approach increases governmental effectiveness in combating IP-based crime. This coordination is necessary with respect to both policy issues and law enforcement operations.

16. The placement of IPEC in the Executive Office of the President enhances the coordination of the USG's IP enforcement activities, which are carried out by a range of departments and agencies that have their own subject matter expertise and areas of responsibility – spanning areas such as diplomacy, trade, and criminal and civil law enforcement as well as other areas. Enhanced coordination improves the ability of the agencies to work together to more effectively

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<sup>12</sup> 15 U.S.C. 8113(a).

<sup>13</sup> The FY 2022 IPEC Annual Report to Congress is available at: [https://www.whitehouse.gov/wp-content/uploads/2023/04/FY22-IPEC-Annual-Report\\_Final.pdf](https://www.whitehouse.gov/wp-content/uploads/2023/04/FY22-IPEC-Annual-Report_Final.pdf).

<sup>14</sup> Please see our webpage at: <https://www.whitehouse.gov/ipec/reports-and-documents/> to view IPEC Annual Reports from previous years.

advance strategic and multi-disciplinary objectives and, through this collaboration, to achieve greater success in reducing IP infringement.

17. In addition to coordinating with respect to policy issues, the USG has adopted a comprehensive and coordinated operational approach to combating IP-based crime. The “Whole of Government” operational approach is exemplified in the United States National Intellectual Property Rights Coordination Center (IPR Center) that is led by a Director from DHS/HSI (Homeland Security Investigations), and has Deputy Directors from DHS/CBP (Customs and Border Protection) and the DOJ/FBI (Federal Bureau of Investigations) (<https://www.iprcenter.gov/about>). The IPR Center includes representatives from 20 Federal agencies and offices, as well as from Interpol, Europol, the City of London Police, the Mexican Revenue Service, and the Royal Canadian Mounted Police – plus partnerships with several private sector organizations (<https://www.iprcenter.gov/partnerships>).

18. The IPR Center serves as a clearinghouse for investigations into counterfeiting and piracy and strives to share critical information and raise awareness to the dangers of IP theft, fraud, cyber intrusions, and trade violations by coordinating with the 25 US and international government agencies.<sup>15</sup>

19. The IPR Center relies on enhanced interagency and inter-governmental cooperation as well as engagement with the private sector. The task force structure enables the IPR Center to share case specific information in real time to combat IP crime and to leverage effectively the resources, skills, and authorities of each participating agency and provide a comprehensive response to IP theft. The collaboration allows law enforcement to use resources as efficiently as possible by de-conflicting cases and using each agency’s comparative advantage to most effectively conduct investigations. (As mentioned above, IPEC does not control or direct any law enforcement agency in the exercise of its investigative or prosecutorial authority.)

#### A. EXAMPLE OF “WHOLE OF GOVERNMENT” APPROACH

20. Another example of the USG’s “Whole of Government” approach was the development of the DHS-led report on “Combating Trafficking in Counterfeit and Pirated Goods”<sup>16</sup>. As e-commerce platforms rose in popularity, the number of counterfeit and pirated goods reaching consumers in the US grew substantially over the course of just a few years, leading to a call for action to fight this illicit trade.

21. The DHS-led report contained both actions to be taken by the USG and also “best practices” for adoption by e-commerce platforms and third-party marketplaces. To develop these recommendations, representatives from the Departments of Homeland Security, Commerce, State, and Justice – together with IPEC, the Office of the United States Trade Representative, and other White House Offices – brought together their respective expertise and capabilities to discuss the issues, to identify and consider options, and to determine an appropriate course of action.

22. Stakeholders also played an important role in the development of the report. At the beginning of the interagency process, the Department of Commerce sought public comments “from intellectual property rights holders, online third-party marketplaces and other third-party intermediaries, and other private-sector stakeholders on the state of counterfeit and pirated

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<sup>15</sup> More information on the IPR Center is available at 19 USC § 4344 and on their website: <https://www.iprcenter.gov/>.

<sup>16</sup> Department of Homeland Security, “Combating Trafficking in Counterfeit and Pirated Goods”, issued January, 23, 2020, available at: [https://www.dhs.gov/sites/default/files/publications/20\\_0124\\_plcy\\_counterfeit-pirated-goods-report\\_01.pdf](https://www.dhs.gov/sites/default/files/publications/20_0124_plcy_counterfeit-pirated-goods-report_01.pdf).

goods trafficking through online third-party marketplaces and recommendations for curbing the trafficking in such counterfeit and pirated goods”<sup>17</sup>.

#### **IV. ENGAGEMENT WITH THE PRIVATE SECTOR**

23. The Office of the IPEC regularly interacts with the private sector. The office is interested in hearing from stakeholders so that we can better understand their perspectives, issues they may be facing, and views they may have on particular topics. As an example, the preparation of the JSP involves issuing a request inviting public input and participation in shaping the Federal Government’s intellectual property enforcement strategy. This is an open process during which any one can submit comments.

#### **V. CONCLUSION**

24. In conclusion, since it is often the case that a number of departments, offices, and agencies share responsibility for IP enforcement, coordination and strategy-setting is essential for national effectiveness. A “Whole of Government” approach to IP enforcement seeks to break down silos that can exist amongst government agencies, maximizing appropriate collaboration. The approach leverages the resources, skills, and authorities of each individual governmental entity, and better ensures a comprehensive response to IP theft, as compared to an agency-by-agency approach that can often be fragmented. It also entails appropriate collaboration between government and private industry, trade associations, civil society—including consumer groups and labor unions, as well as other governments across the world.

[End of document]

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<sup>17</sup> Department of Commerce, “Comment Request; Report on the State of Counterfeit and Pirated Goods Trafficking and Recommendations”, issued July 5, 2019, available at: <https://www.regulations.gov/document/DOC-2019-0003-0001>.