

**SPEECH BY**

**H.E DATUK HJ. MOHD SHAFIE BIN HJ. APDAL,  
MINISTER OF DOMESTIC TRADE AND CONSUMER AFFAIRS, MALAYSIA**

**AT THE THIRD ADVISORY COMMITTEE ON ENFORCEMENT, WIPO,**

**GENEVA, 15 MAY 2006**

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At the outset I would like to thank the World Intellectual Property Organization for having invited me to address at this opening session of the Third Advisory Committee on Enforcement. I am happy that this gathering is going to discuss issues like raising awareness of decision makers in the public and private sectors, training of law enforcement officials, and education of adult consumers and the young generation. I am also told that WIPO would share with us its recent activities in the field of intellectual property enforcement, and finally there would be putting of minds together to chalk out future work in the area of enforcement. Therefore in a nutshell, this gathering offers a perfect platform for rich deliberations and concrete decisions.

Ladies and Gentlemen,

As we all know counterfeiting and piracy cut across every individual, people, society, interest group and country. Therefore it is certainly a cause for concern for each of us. Already several governments, regional associations and world bodies are increasingly taking up the issue of enforcement. This clearly indicates that WIPO is not acting in isolation. It is an undeniable fact that the whole world is with WIPO in spirit in addressing the issue at hand.

Ladies and Gentlemen,

We are all addressing the issue of enforcement under the roof of WIPO that advocates enforcement measures through treaties that are directly under its purview as well as those mentioned in the TRIPS Agreement of the World Trade Organization. Article 3 of the Convention that established the World Intellectual Property Organization advocates the protection of intellectual property throughout the world, in cooperation with its member states. There are also provisions in the Paris Convention, Berne Convention, Rome Convention, WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty for enforcement measures. Part three of the TRIPS Agreement sets minimum standards for effective IP enforcement procedures. It is upon such firm foundation that we are gathered here to address this august gathering.

Ladies and Gentlemen,

Let me discuss the underlying trends in piracy and counterfeiting that have called for stronger enforcement measures. We are all well informed that worldwide trade in counterfeit and pirated products is growing at an alarming rate, much bigger in size and scope than what our mortal minds could conceive. Today IP - related products dominate goods flowing across international borders. Unfortunately a big portion of these goods is infringing goods. The shocking truth is that the value of these pirated and counterfeiting goods runs into millions, nay billions of dollars. While we acknowledge that

counterfeiting and piracy are rampant, it is difficult to get statistics on the level of these activities, as such activities are shrouded in secrecy. However, it is generally said that piracy and counterfeiting activities on a global scale are said to represent between 5 and 7% of world trade. This is an alarming figure dangerous enough to easily upset the world economic equilibrium. With the rapid quickening of globalization, problems of piracy and counterfeiting will worsen to unimaginable dimensions. Technology is an asset and a liability as well. This is because new and modern technologies enable almost exact reproductions of original products where brands are duplicated to resemble the original, and the unsuspecting consumers are easily duped! Online piracy by means of downloadable media or streaming media is also growing at an alarming level. With the advent of broadband facilities, full-length movies could be downloaded within a few hours. This issue is already a cause for concern.

Ladies and Gentlemen,

Having addressed the growing trend in counterfeiting and piracy let me then lead into my next area of discussion. Why do we have to address enforcement? The reasons are far too many to be listed. But I shall delve into some salient aspects.

- First, specific industries have become the direct target of counterfeit and piracy, and this is threatening the very existence of such industries such as computer software, film industry and the music industry.
- Second, there are reports that organized criminal networks control the counterfeiting and piracy activities. No government in the world should condone such criminal activities run by mafias and other underground elements
- Third, rampant occurrence of counterfeiting and piracy is also rapidly dampening the spirit of the business communities. Intellectual property theft stifles innovation and deters honest entrepreneurs from investing in product and market development.
- Four, countries that aim to increase the value of their exports by using their intellectual capital are also hampered in their efforts by counterfeiting and piracy.
- Five, in many countries fast-moving consumer goods lose a big portion of market share to counterfeits. This poses economic drainage.
- Six, counterfeiting and piracy do pose revenue losses to governments. This deprives governments of revenues needed for the country's infrastructure and other priorities.
- Seven, counterfeiting and piracy threaten the lives of the multitudes across the globe. Medicines, surgical equipments, food, apparel, soft drinks, cigarettes, electrical appliances, toys, aircraft and vehicle parts are all affected and all particularly affect lives of people.

Ladies and Gentlemen,

Although IP owners are given exclusive rights, these rights assume no meaning when they are not matched with appropriate remedies. Remedies for infringement of IP rights rest with effective enforcement measures. Enforcement actions becomes more complex, with a number of players coming into the fore of action, such as IP owners, enforcement officers, attorneys, judges, customs, police, prosecutors and administrative authorities. Coupled with this wide range of key players, IP enforcement also involves minute details of procedures, remedies, structure and specialization of courts and appellate bodies, cost of litigation and legal advice. In order to enforce his IP rights successfully, the right holder has to take into account, therefore, a large number of legal issues and practical considerations. Allow me to say some possible approaches on the matter.

Ladies and Gentlemen,

Political will is uppermost in deciding the destiny of enforcement measure in all countries. Most of the enforcement measures had paid off handsomely only when there had been political will, meaning government's commitment and direct involvement as it is the government that frames policies, provide the funds, pool the resources and run prosecutions in the courts.

While the governments provide the laws and infrastructure, IP rights holders as owners of private properties should rightfully lead the way to protect these rights. The right holders should take up civil actions on their own and should not depend solely on government to take actions. He must become his own policeman, monitor and take action to stop any infringement of his rights. Again there must also be a holistic approach, involving many parties of interest, such as government ministries, enforcement authorities, industry, non - governmental organizations, customs and the police.

Ladies and Gentlemen,

I wish to go into some details on border measures, as this is one aspect that continues to remain an area of conflict and contention between right holders and the authorities. While enforcement officers and policemen act within domestic boundaries, the customs officials become the guards at the border. Let me say that customs control is not an easy and straightforward task. In practice, the procedures and levels of effectiveness continue to vary significantly from country to country. Even though they guard at the border, it is again the right owners who are summoned to play a central and crucial role in achieving effective customs action. The effectiveness of the border measures is left to the close cooperation and collaboration between the right holders and the customs authorities.. But there are also practical problems to be looked into. In many countries the customs officers do not act on their own volition or freewill. They only come into the picture when informed, tipped off or on random checking. As it is the right holders who know best the details of the origin of such goods, he is duty bound to provide the needed information. The undeniable fact is that it can be an uphill task for customs authorities to

deal with rights owners who do not always give the right level of support and concise information. Customs need rights holders to provide detailed information on products, routes and normal shipping patterns in order to detect counterfeits. The right holders unfortunately do not always have all these minute details.

Ladies and Gentlemen,

Strong legislations and effective administrative infrastructures are important for acquisition of IP rights. Yet the fact remains that mere acquisition of IP rights is of little economic value if these rights cannot be translated into effective enforcement. Deterrent sentences spelt out in the IP laws may provide the parameters for conviction or punishment. But mere provision of sound laws does not always guarantee effective enforcement. Strong and deterrent laws would only be appreciated as paper tigers, if they are not accompanied by strong enforcement measures. Some countries advocate imprisonment for those involved in counterfeiting activities, while other countries are satisfied with imposition of fines. Counterfeiters must end up behind bars, not just pay up the fines and continue with the same business of infringement!

Ladies and Gentlemen,

Let us not forget that we are dealing with criminals who are intelligent, cunning and shrewd. As we draft new laws, rules and regulations, these criminals always find ways and means to escape the grip of the laws. Therefore to counteract enforcement bodies should have officers who are highly trained to tackle these criminals swiftly and effectively. In Malaysia we have a special dedicated team of 300 enforcement officers to work around the clock to act against these pirates and counterfeiters. More often than not it's a "cat and mouse" game.

Ladies and Gentlemen,

The tail end of any enforcement is the prevalence of sound judiciary. There has to be a judiciary system that acts with speed and efficiency. Justice delayed is justice denied, so echo the legal fraternity. In the judiciary a degree of IP specialization will be of great advantage to the members of the bench because it is only through experience that judges can be relied on to make the most sound and appropriate decisions in intellectual property cases, and by so doing mete out proper justice. Members of the bench would have to be well conversant in the IP laws. It is for this reason that numerous tailor made seminars are being organized for judges and prosecutors alike in a noble and wise effort to enable faster disposal of cases.

Ladies and Gentlemen,

In simple economics, where there is no demand, the supply goes down. So the demand should be diminished first. That is to say that the consumers should be convinced to stop buying the illegal IP products. The consumers by and large do not seem to understand the gravity of supporting illegal copies. With modern technology, perfect illegal copies are

made, and they are cheap as well. So the consumer's mind goes for a good, which is as good as the original and yet cheap. He shall not be dissuaded until and unless he is convinced that he is assisting and abetting the culprits in killing the IP owners and their creativity. This is where the education of the public comes into play. Some countries have been able to suppress counterfeiting and piracy on account of their aggressive campaigns against counterfeiting and piracy, by way of dissemination of publications, media statements, seminars and other form of awareness programs. That is to say in a wider context, the consumers too would have to be roped in to fight against this cancerous disease of piracy and counterfeiting. In some countries there are efforts to introduce the subject of IP into the school curriculum. Through such education, the next generation would grow to be an IP respecting one.

Ladies and Gentlemen,

You may be interested to listen to the Malaysian experience in the area of Enforcement of IP rights. Malaysia is seriously committed to eradication of counterfeiting and piracy activities. Several practical measures are being taken to address the piracy situation in Malaysia.

## **ENFORCEMENT AGENCIES**

There are various agencies enforcing IP rights in Malaysia, prominent among which is the Enforcement Division of the Ministry of Domestic Trade and Consumer Affairs. The IP related laws that this Enforcement Division enforces are the Copyright Act 1987, Trade Descriptions Act 1972, and the Optical Discs Act 2000. The numerical strength of the enforcement officers in the Ministry of Domestic Trade and Consumer Affairs was strengthened recently. There are now 57 branches with 2,174 personnel across the country.

## **ANTI PIRACY TASK FORCE**

When piracy activities were rampant as early as 1999 a high level Anti Piracy Task Force was formed with the Minister of Domestic Trade and Consumer Affairs sitting as Chairman. This Task Force was made up of both government agencies and private sectors involved in IP business. The laws of the various government agencies that were pooled together for effective enforcement were the Copyright Act 1987, Film Censorship Act 2002; Printing Press and Publications Act 1984; Film Development Act 1984; Price Control Order 1980; Customs Act 1967; Trade Descriptions Act 1972 and the Local Authorities by-Laws. Since the formation of this Task Force till 7 May 2006 165,635 raids have been conducted throughout the country which culminated in 38,721 cases being taken under the various laws by the multitude of agencies involved in the battle against piracy and counterfeit. Goods worth US113 million have been seized.

## **SPECIAL TASK FORCE TO COMBAT COUNTERFEIT PRODUCTS**

A Special Task Force to Combat Counterfeit Products made up of the Royal Police, Royal Customs Department, the Ministry of Health, Pharmaceutical Industries, the Energy Commission, SIRIM BERHAD, the Cigarette Manufacturing Industries and other related associations and guilds have also participated actively in discussions and in coordinating joint raids and enforcement activities.

## **ON GOING STRATEGIES**

Some of the ongoing strategies to combat piracy and counterfeiting are:

- i) Licensing of Optical Discs Factories under the Optical Discs Act 2000 to control the production of optical discs.
- ii) Banning of sale of optical discs in open space since August 2001.
- iii) Setting of Forensic Center with the Chemistry Department to detect source on production through forensic analysis and reports.
- iv) Effective 15 January 2003, there was the compulsory affixing of original labels on optical discs products to facilitate identification of original products.
- v) Increasing surveillance activities to detect sources of illegal production of optical discs/ counterfeit products and to stop distribution;
- vi) Setting up of a Special Team for anti piracy operations aided by a strong Prosecution Team solely for copyright cases.
- vii) Setting up of a Reward Scheme for informers to obtain information from all sources.

## **NEW EXTRA POWERS UNDER THE COPYRIGHT ACT**

As early as 1997, the Copyright Act was amended to adhere to the provisions of the Internet treaties. That helped to address many of the online copyright infringements. Again in 2003 the Act was amended to empower the enforcement officers to arrest offenders without warrant. With this new power, the blatant sales of pirated products in the open market have reduced tremendously. To date 1683 persons have been arrested for various offences relating to IP infringement.

## **SPECIAL EXPORT UNIT**

The Ministry of Domestic Trade and Consumer Affairs established a special Export Unit in April 2005 to monitor the outgoing parcels and cargos at exit points. This move is aided by the placement of 2 high tech scanner machines by MAS CARGO at KLIA and

Penang Airport. Until 30 April 2006 the enforcement officers have intercepted exporting activities at the Airports and at various spots and seized 1.1 million units of pirated VCD/DVD worth USD 2.8 million.

## **BORDER MEASURES**

To prevent the entry of counterfeit goods into the country, the Enforcement Division of the Ministry of Domestic Trade and Consumer Affairs with the cooperation of the Royal Customs Department and the Malaysian Port Authority, has intercepted in preventing counterfeit goods from coming into the country or from entering other countries using Malaysia as the transit point. Among the goods seized were well-known brand electrical appliances and counterfeit cigarettes.

## **AWARNESS CAMPAIGNS**

In February 2002 A National Anti Piracy Campaign was launched by the Minister of Domestic Trade and Consumer Affairs, supported by the key players in the industry. These campaigns to create awareness among the traders, end-users and consumers were carried out throughout the country by both the government and private sectors.

## **IP COURTS**

In Malaysia, the government is already thinking of setting up of an independent IP court, towards which studies are being conducted. In the meantime special dedicated courts are already concentrating on handling IP - related cases.

Ladies and Gentlemen,

These are some of the thoughts I have to share with the distinguished participants. I believe other speakers and participants will have more ideas to be shared at this gathering for our common discussion and deliberation.

I once again thank WIPO for inviting me and giving me this opportunity to address this dignified gathering.