

Advisory Committee on Enforcement

Seventh Session

Geneva, November 30 to December 1, 2011

Summary by the Chair

Document prepared by the Secretariat

1. The seventh session of the Advisory Committee on Enforcement (ACE) was opened by the Chair of the Committee's 6th session, Mr. Makiese Augusto, First Secretary, Economic Affairs, Permanent Mission of Angola. Mr. Christian Wichard, Deputy Director General, welcomed the Committee on behalf of the Director General of WIPO.
2. The Committee unanimously re-elected Mr. Augusto for one year.
3. The Committee approved the admission of the UN Interregional Crime and Justice Research Institute (UNICRI) as ad-hoc Observer.
4. The Committee adopted the Draft Agenda (document WIPO/ACE/7/11 Prov.) with amendments, as follows. Agenda item 7 reads: "Future work of the ACE". There is a new agenda item 8 reading "Contribution of the ACE to the implementation of the respective Development Agenda recommendations". Agenda item 9 reads "Adoption of the Summary of the Chair". Agenda item 10 reads "Closing of the session".
5. The Delegation of the European Union (EU) stated that the inclusion of agenda item 8 should not constitute a precedent for the future. Such item should not be automatically included in future agendas of the ACE, and there should be a case-by-case examination of any future reference to the Development Agenda.
6. The Committee heard Opening Statements by Group B, GRULAC and the EU, emphasizing the value of the ACE as a forum for the exchange of information, and re-confirming commitment to constructively engage in the work of the Committee. It was observed that the overlapping of the 7th session of the ACE with parts of the 22nd session of the SCCR was considered unfortunate.

Group B announced that the proposal for future work of the ACE, submitted by the United States of America in Annex I of document WIPO/ACE/7/3, had been adopted as a Group B proposal. The Committee also heard a statement by the Third World Network that referred to a letter submitted to the Director General of WIPO by a number of civil society groups on November 30, 2011.

7. Under agenda item 5, the Committee heard presentations by seven speakers relating to the various items of the agreed work program (working documents WIPO/ACE/7/4 to WIPO/ACE/7/8, WIPO/ACE/7/10, and WIPO/ACE/7/REF/IPEA). The Committee valued the quality and balanced approaches of the working documents and the presentations. Among the specific issues that were dealt with in the presentations relating to item 2 of the work program, were, *inter alia*: a review of consumption decisions in the digital environment, including with a view to the quality of available data in this context; the identification of reasons that fuel counterfeiting and piracy from the perspective of African countries, including factors such as poverty, inequality and insufficient right holder cooperation in enforcement and awareness-raising activities, as well as strategies to effectively address counterfeiting and piracy in this context, underscoring the need to carefully balance IP enforcement issues with considerations of socio-economic development and public health. In connection with item 3 of the work program, a study reviewed and analyzed a range of sources, as well as the quality and comparability of statistical information, on counterfeiting and piracy. The study concluded with a set of recommendations seeking to identify opportunities for further improving the quality and availability of relevant data while bearing in mind associated costs and the resulting need for defining priorities in such exercise. In addition, an update was provided on the work undertaken under the auspices of the European Observatory on Counterfeiting and Piracy, seeking to develop a methodology to measure scope and impact of counterfeiting and piracy within the EU. Among the items addressed under item 4 of the work program were: an introduction to the concept of Corporate Social Responsibility (CSR) in the context of Building Respect for IP and as a means to conduct business in a way that contributes to the well-being of society, including educating consumers towards sustainable consumption; an overview of the findings of a study on anti-competitive enforcement of IP rights (sham litigation), undertaken in the context of Development Agenda Project DA_7_23_32_01 (IP and Competition Policy) and based on a comparative analysis of legal concepts and standards applied in a number of jurisdictions in connection with abuse of litigation in defense of IP rights, including with a view to the interrelation between IP rights, on the one hand, and societal interests and technological development, on the other; and a consensus-based cooperation model between right holders and Internet platforms, introduced in France, that, by establishing a set of practices, seeks to improve the scope and efficiency of preventive measures against the trade of counterfeit goods over the Internet while acknowledging the need for legitimate e-commerce as an important driver to economic growth. In the latter context, reflections also touched on opportunities for “soft law” to supplement sometimes lengthy legislative processes; as well as the model’s focus on preventive measures, including parties’ commitment to enhanced cooperation in the interest of effective filtering of offers of counterfeit goods.

8. In the discussions following the presentations, a number of observations were made and questions were raised. They addressed, *inter alia*: the need for further research to fully understand the demand-side in the context of counterfeiting and piracy, including with a view to making available evidence-based data, and to better appreciating emotional and, where applicable, religious factors underlying consumer behavior; the important role that customs administrations had in effectively addressing counterfeiting and piracy, and respective technical assistance provided by the World Customs Organization (WCO) upon request by its Member administrations, in close cooperation with other IGOs including WIPO and the World Trade Organization (WTO); the importance of further improving the availability of statistical information, including in the context of enhancing information sharing to support operational border enforcement; the impact of differences in national legislation and in customs with regard to targeting methodologies on statistical information; the possible contribution of increased random sampling by customs

administrations to improving statistical information, while acknowledging that customs administrations gave priority to risk analysis targeting; as well as the crucial role of careful definitions of the terms counterfeiting and piracy in legislation, including with a view to the potential impact on statistical information, policy development and operational IP enforcement. Moreover, the continued importance of enforcement-related education and awareness-raising for all relevant stakeholders was emphasized. Further comments reflected on: the potential role that CSR could play in educational efforts in the context of Building Respect for IP; the concept of gaining time as a prime objective in sham litigation; and opportunities for complementing legislative processes with voluntary cooperation models, including in the field of copyright, while acknowledging the need to duly take into account basic rights such as freedom of speech and privacy in such models.

9. The Committee took note of information provided by various Delegations drawing attention to statistical information concerning developing countries to supplement the information set out in document WIPO/ACE/7/5. Such information was available at respective national customs and police sources, as well as within the WCO Customs Enforcement Network (CEN), however in some cases only in the respective local language.

10. The Committee further took note of supplementary information provided by the WCO on the WCO Interface Public Members (IPM), an online tool to facilitate communication between customs administrations and right holders, as well as on the WCO CEN. The latter seeks to facilitate the exchange of information as well as the sharing of intelligence among Member administrations. WCO pointed to challenges faced by this tool in the context of gathering data on counterfeiting and piracy activities, including human resources constraints and the fact that CEN was designed to enhance risk analysis by customs administrations rather than establishing statistics.

11. The Chair took note of proposals made by the Delegations of Azerbaijan and Saudi Arabia suggesting various additional educational and outreach activities of WIPO in the field of Building Respect for IP.

12. The Chair further noted the offer by the Delegation of Morocco to report, at the 8th session of the Committee, the findings of a study, undertaken in public-private partnership, that was seeking to assess the economic impact of counterfeiting in Morocco, and encouraged other Member States engaged in similar efforts to follow that example.

13. The Chair took note of the proposal by the Delegation of France to the Secretariat to translate the *Charte Sirinelli*, referred to in working document WIPO/ACE/7/8, into the other working languages of the Committee and to distribute it among Committee members.

14. The Committee took note of information provided by the Delegation of Egypt concerning the development of an online dispute resolution system that was seeking to permit a cost-effective resolution of low-value disputes over illicit goods traded over the Internet, as well as of the proposal by the Delegation that such model be considered at the international level.

15. Under agenda item 6, the Secretariat introduced document WIPO/ACE/7/2 on recent activities of WIPO in the field of Building Respect for IP which include training, capacity building, legislative and policy advice, awareness-raising, international cooperation and information exchange. The Committee took note of the presentation by the Secretariat.

16. The Committee noted information provided by the Delegation of Japan concerning the joint publication by the Japanese government and WIPO, of a new awareness-raising tool (“Manga”) that seeks to enhance consumers’ understanding of health and safety risks associated with counterfeit goods.

17. The Chair took note of requests by the Delegations of Brazil and Pakistan concerning the dissemination of additional information relating to technical assistance activities provided by WIPO in the field of IP enforcement. In that context, the Chair also noted the offer by the Secretariat to find practical ways of making such information available at the 8th session of the ACE. In that context, the Chair also took note of statements by Representatives of the Computer and Communications Industry Association (CCIA) and the Third World Network.

18. Under agenda item 7, the Secretariat introduced document WIPO/ACE/7/3. The Delegations of Group B, Russia and Peru introduced their respective proposals for the future work of the ACE set out in the Annexes of document WIPO/ACE/7/3. The Delegation of Russia specified that it would give priority to the topic reflected in item 1 of its proposal.

19. The Committee took note of the proposals referred to under paragraph 18, above. It was agreed that all proposals referred to in paragraphs 3 and 4 of document WIPO/ACE/7/3 would serve as a basis for the discussion of the future work of the Committee at its 8th session. The Committee requested the Secretariat to prepare, for the 8th session of the ACE, an analysis of those proposals, including an assessment of the extent to which they have already been addressed.

20. The Committee agreed to consider, at its 8th session, the following topic:

A continuation of the current work program (items 2, 3 and 4).

21. Under agenda item 8, the Chair invited views by Delegations on the contribution of the ACE to the implementation of the WIPO Development Agenda.

22. The Delegation of South Africa underscored the importance of the implementation of the monitoring, assessing, discussing and reporting mechanism (Coordination Mechanism). The 2010 WIPO General Assemblies had approved that mechanism requiring all relevant WIPO bodies to report on their contribution towards the implementation of the Development Agenda Recommendations. If properly applied, the Coordination Mechanism would facilitate scrutinizing within the Organization cross-cutting issues and activities so as to avoid duplication. The ACE was dealing with cross-cutting issues addressed in other WIPO bodies. In that regard, it was prudent that an agreement had been reached on a standing agenda item on the contribution of the ACE to the implementation of the relevant Development Agenda Recommendations. The Delegation appreciated that the ACE would submit its second report to the WIPO General Assembly. The Delegation recalled the commitment to mainstream the Development Agenda across all WIPO activities, and welcomed that the activities of the ACE were primarily premised on Development Agenda Recommendation 45. The Committee's mandate was Building Respect for IP which should be addressed through studies, demand-/country-driven technical assistance, activities aimed at raising awareness, and interactive activities to share experiences. The Delegation welcomed the Committee's commitment to undertake studies aimed at Building Respect for IP with a view to unpacking the underlying causes and impacts of counterfeiting and piracy whilst taking into account the development dimension. At the same time, the Delegation indicated that there was room for improvement, especially on the quality of the studies undertaken. Document WIPO/ACE/7/2 entitled "Recent Activities of WIPO in the Field of Building Respect for IP" provided a good basis for assessing the contribution of the Committee to implementing the Development Agenda. From a cursory point of view, the legislative advice, training and awareness-raising assistance provided by the Secretariat as reported in paragraphs 4 and 5 of that document was consistent with Development Agenda Recommendations 13 and 14. However, there was a need to provide additional details on consumer motivations and attitudes in regard to counterfeiting and piracy as outlined in paragraph 6 of the document. Consumer motivations and attitudes were fundamental issues not only for developing countries but for all countries. Concerning international

coordination and cooperation, the Delegation noted the importance of WIPO's engagement with other Intergovernmental Organizations and other relevant stakeholders in the field of IP. Paragraph 6 of document WIPO/ACE/7/2 showed that WIPO included the development-oriented approach to Building Respect for IP in other forums and that this approach was fully reflected in collaborative efforts. The Delegation welcomed that statement and requested further substantiation by evidence. The Delegation further noted with interest some of the suggestions made at the Sixth Global Congress on Combating Counterfeiting and Piracy. Some participants of the Congress had recognized the importance of WIPO and had thus encouraged WIPO to work towards producing empirical studies on enforcement issues. That had been prompted by the realization that there was little empirical evidence-based data, especially statistical data, to assess the extent and impact of counterfeiting and piracy in various countries. Policy makers needed to consider available empirical evidence before addressing the challenges relating to counterfeiting and piracy. The Delegation valued suggestions concerning the need to address enforcement on the basis of a value chain of all agents involved, with due regard to the interface between competition and enforcement. Those were certainly issues that could be looked at by the Committee. The Congress could be further improved by widening the scope of participation by consumer organizations, civil society, and academia so as to broaden the dialogue and deepen the understanding in promoting respect for IP. While understanding that the Congress was organized in cooperation with various stakeholders, it was advisable for the Secretariat to consult Member States in the preparation for the Congress so that it would become an inclusive and transparent process. The Delegation supported activities aimed at exchanging information on Building Respect for IP. It was through the exchange of experiences among Member States that coordination could be fostered to this end. The Delegation concluded that there was a need for a balanced approach between enforcement and development in the work undertaken by the Committee in line with Recommendation 45 of the Development Agenda.

23. The Delegation of Algeria, speaking on behalf of the Development Agenda Group (DAG), welcomed the adoption of agenda item 8 which referred to the contribution of the ACE to the implementation of the Development Agenda Recommendations. DAG recalled that Recommendation 45, which emphasizes the need to place the enforcement of IP rights in the broader context of the interests and concerns of development, would directly relate to the mandate and competence of the Committee. The principles contained in that Recommendation should guide the activities of WIPO in the field of enforcement. The Committee should reflect that approach in its activities and focus its program on the development dimension while ensuring that enforcement laws respected rights and obligations. DAG underscored that the thematic approach of the Committee was very useful because it offered Member States a framework to conduct discussions on various aspects of enforcement of IP rights. The debates that had been conducted confirmed the reality of a complex environment in this area. The various presentations reflected the fact that the Committee should understand the issue of enforcement in a holistic manner and no longer see it only from the perspective of right holders. Within that framework, DAG believed that the Committee made progress in implementing Recommendation 45. At the same time, DAG felt that further efforts were still needed to fully achieve implementation of Recommendation 45. On some important issues more work needed to be done. That included the contribution of IP rights to the transfer of technology, and the contribution of enforcement in the establishment of a strong network of SMEs in developing countries. Those questions deserved the Committee's attention.

24. The Delegation of Brazil welcomed the opportunity to comment on the Committee's contribution to the implementation of the Development Agenda Recommendations, especially Recommendation 45. The Delegation stated that Recommendation 45 was directly related to the competences of the ACE. It defined WIPO's approach to IP enforcement in the context of broader societal interests and especially development-oriented concerns. The principles contained in that Recommendation should orient WIPO's activities regarding enforcement. The Delegation recalled

that there was a reference to Article 7 of the TRIPS Agreement. The Delegation further noted that WIPO had been making progress in the implementation of Recommendation 45 since the adoption of the Development Agenda. The work program approved at the 5th session of the ACE was a milestone in that process. It provided various pertinent elements for discussion in future meetings that corresponded to different views and objectives of Member States on issues of enforcement. The results of the work program could be perceived in the documents submitted during the last and the present sessions of the ACE. They reflected WIPO's efforts to develop an inclusive approach in its activities relating to Building Respect for IP. They took into account specific views and opinions on enforcement issues and were a good basis to promote a balanced discussion on Building Respect for IP. The Delegation hoped that the future sessions would promote such debate based on balanced documents. The Delegation further observed that despite these achievements there still was a long way to fully implement Recommendation 45. For example, the contribution of the protection and enforcement of IP rights to the transfer and dissemination of technology remained to be addressed. Improving and consolidating WIPO's enforcement-related technical assistance would be a good way to move forward. As proposed by the DAG at the last session of the ACE, the Committee should evaluate how WIPO had been promoting the concept of Building Respect for IP in its technical and legislative assistance activities. The Delegation concluded that WIPO, as a specialized agency of the United Nations, should be consolidated as the main forum to provide guidance in the cooperation on enforcement of IP rights, and that the work of the ACE could contribute to this end.

25. The Delegation of Pakistan welcomed the opportunity to express its views on the contribution of the ACE to the implementation of the Development Agenda. The Delegation noted that the Development Agenda Recommendations, especially Recommendation 45, had a direct link with the work that the Committee was undertaking. In that context, the Committee needed to align its work with the Development Agenda Recommendations. The Delegation observed that over the past several years, there had been an increasing demand on developing countries to do more on IP enforcement. They were expected to enforce higher levels of IP rights, regardless of the socio-economic conditions and challenges. Moreover, trade and investment decisions were usually linked to stronger inputs of the TRIPS-plus enforcement criteria. That was accompanied by a very limited approach to combating infringement of IP rights in which, in essence, stricter laws and capacity building of enforcement agencies were seen as a primary means to ensure enforcement. Such an approach could temporarily reduce IP infringement levels, but could not address the challenge in a sustainable manner. A broader strategy would have to be followed to allow the establishment of conditions in which all countries would have a shared understanding of the socio-economic implications of enforcement measures and of the direct economic interests in taking such measures. In such an environment, countries' trials to enforce IP rights would be derived from internal and external factors. The Delegation stressed that the present meeting needed to work towards identifying the key reasons behind IP rights infringement. That, keeping in view the different socio-economic conditions of the countries, would lead to understanding the issues of IP infringement in a better manner. The Delegation concluded that there were measures that needed to be taken in the interest of creating an enabling environment, and that it was looking forward to the work of the Committee in that direction.

26. The Representative of the Third World Network observed that the Development Agenda should underpin and guide the work of the Committee, and welcomed the Committee's work on statistical information relating to IP infringement as well as on understanding consumer behavior and motivations that lead to IP infringement. The Representative further referred to concerns relating to transparency, balance and WIPO's partnerships with industry-related stakeholders, and stated that more could be done to fully implement and realize the spirit behind the Development Agenda.

27. The Secretariat will forward the views set out in paragraphs 22–26, above, to the 2012 WIPO General Assemblies.

28. The Committee is invited to adopt the Summary by the Chair, set out in paragraphs 1-27, above.

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