

# WIPO



WO/GA/38/4

ORIGINAL: English

DATE: June 19, 2009

WORLD INTELLECTUAL PROPERTY ORGANIZATION  
GENEVA

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## WIPO GENERAL ASSEMBLY

### Thirty-Eighth (19<sup>th</sup> Ordinary) Session Geneva, September 22 to October 1, 2009

#### REPORT ON THE WORK CONCERNING THE ADVISORY COMMITTEE ON ENFORCEMENT (ACE)

*Document prepared by the Secretariat*

1. The Advisory Committee on Enforcement (ACE), established in September 2002 by the WIPO General Assembly at its twenty-eight session (document WO/GA/28/7), held four sessions in June 2003, June 2004, May 2006 and November 2007, respectively. The ACE followed, as agreed in its first session, a thematic approach.
2. The fourth session of the ACE in 2007, addressed the topic “Cooperation and Coordination at the International, Regional and National levels in the field of Enforcement.” In the absence of an agreed topic to be considered in its fifth session, the Chair invited the Member States to have further consultation and to provide the Secretariat with their proposals for a topic, as well as for the procedure to be applied for selecting future topics, by the end of February 2008. It was also recommended that the Secretariat take into consideration the suggestions made by Member States on the list of speakers.
3. The Secretariat received three written proposals from the Group of Latin American and Caribbean Countries (GRULAC), Group B and the Group of Central Asian, Caucasus and Eastern European Countries by deadline as indicated in the above. On March 30, 2008, the Secretariat extended the deadline to June 27, 2008, to offer to Member States who had not yet done so a further opportunity to submit their proposals for a topic for the next session of the

ACE and, in addition, to allow Member States who had submitted their proposals another opportunity to supplement or modify their proposals.

*Written proposals by the regional Groups*

4. In their proposal dated February 25, 2008, GRULAC expressed its wish that Recommendation No. 45 of the WIPO Development Agenda<sup>1</sup> guides the future discussions of the Committee.

5. Group B stated in a communication dated February 29, 2008 (received by the Secretariat on March 17, 2008) that it continued to welcome the topic suggested by the WIPO Secretariat during the fourth session of the ACE as the most appropriate, namely “coordination and cooperation related to IP crimes via the Internet” (paragraph 21 of document WIPO/ACE/4/2), but furthermore indicated that other topics to be considered could include administrative cooperation and information exchange at national, regional and international levels, among public authorities; on-line trading of counterfeit and pirated goods; education and awareness on the importance of legitimate use of IP; involvement of the private sector in capacity building work; contribution of right holders in enforcement; effectiveness of the judiciary in criminal and civil proceedings; and health and safety concerns related to counterfeiting in the area of medical products. Pertaining to the procedure for the selection of the speakers, Group B proposed that, after the submission of proposals as per the Chair’s invitation, the Chair engages in consultations with the regional coordinators about these proposals, out of which the Chair selects the final topics for the agenda of the next meeting – presupposing that these topics are of relevance to enforcement issues. The agenda for each meeting should then be determined specifically for the particular meeting.

6. The Group of Central Asian, Caucasus and Eastern European Countries proposed, on March 3, 2008, the following as possible topics for the ACE: on-line trading of counterfeit and pirated goods; contribution of right holders in enforcement; involvement of the private sector in capacity building work; administrative cooperation and information exchange at national, regional and international levels, among public authorities; and health and safety concerns related to counterfeiting in the area of medical products.

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<sup>1</sup> “To approach intellectual property enforcement in the context of broader societal interests and especially development-oriented concerns, with a view that ‘the protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations’, in accordance with Article 7 of the TRIPS Agreement.”

*Proposals during consultations with the regional Groups*

7. The Secretariat, with the cooperation of the Legal Counsel, commenced a round of consultations with the Group coordinators on September 5, 2008. During these consultations, which concluded on November 25, 2008, a number of streamlined proposals were carefully considered and thoroughly debated.

8. Following the first consultation on September 5, 2008, Group B confirmed in writing, on September 19, their initial written proposal and expressed a specific interest in discussing the on-line trading of counterfeit and pirate goods, or contributions of right holders/private sector in enforcement, with particular reference to capacity building and the contribution of right holders in enforcement, mentioned in the original proposal. Likewise, also on September 19, the Group of Central Asian, Caucasus and Eastern European Countries confirmed their initial proposal reflected in paragraph 6. above, but stated that with a view to facilitating compromise on the issue, they specifically underscored one of the following two topics namely “involvement of the private sector in capacity building work” and “administrative cooperation and information exchange at national, regional and international levels, among public authorities.”

9. During the consultations, the coordinator of the Asia and Pacific Group submitted a proposal stating that the work of the ACE should be in line with Strategic Goal VI: “International Cooperation on Building Respect for IP.” As such, the work of the ACE should be guided by Recommendation No. 45 of the WIPO Development Agenda. Against that background he proposed that the fifth session of the ACE should identify and define the elements of an enabling environment for promoting respect for intellectual property at all levels and on a sustainable basis, which may include, but which should not be limited to, the proposals made by the other regional Groups. He added that to effectively promote respect for intellectual property, elements that led to intellectual property infringements had to be identified. The ACE should identify such elements and focus on how these elements could be effectively addressed, in a balanced manner, with a view to promote respect for intellectual property in all Member States on sustainable levels. He subsequently added in writing, on December 2, that element that should form part of the “enabling environment” to promote a respect for intellectual property could include pricing issues (how, *inter alia*, the prices of educational materials and medicines could be reduced); licensing agreements (facilitating among others the manufacturing of medicines and the printing of educational materials in developing countries); and transfer of technology (particularly to developing countries).

10. The coordinator of GRULAC reiterated the initial proposal that discussions in the ACE should be conducted within the framework of Recommendation No. 45 of the WIPO Development Agenda. It was further proposed that discussions could embrace issues such as the contribution of, and costs to, right holders in enforcement; the role of educative and economic policies in inhibiting the on-line trading of counterfeit and pirated goods; and the development of reliable indicators for measuring counterfeit and piracy activities.

11. The coordinator for the African Group also proposed a discussion of the contribution of, and cost to, right holders within framework of Recommendation No. 45 of the WIPO Development Agenda and suggested that the discussion embraced dialogue on Part III of the Agreement on the Trade-Related Aspects of Intellectual Property Rights, as well as the role of right holders and Member States in ensuring the transfer of technology to developing and least developed countries.

12. During the consultations, the coordinators of Group B and the Group of Central Asian, Caucasus and Eastern European Countries firmly confirmed their initial proposals, but drew specific attention to their flexibility in order to accommodate the proposals made by the other Group coordinators. As such, on November 25, following a number of intense consultations, all Groups agreed to the topic “Contribution of, and costs to, right holders in enforcement, taking into account Recommendation No. 45 of the WIPO Development Agenda.”

*Proposed speakers and sub-topics*

13. During the consultations and upon concluding agreement on the topic of the fifth session of the ACE, the coordinators were invited by the Secretariat to suggest one or two speakers per regional Group, with an indication of the particular expertise of such speakers relating to possible sub-topics.

14. Following these invitations, the Secretariat received one proposal, from GRULAC on December 12, 2008, suggesting the names of three possible speakers to address the following sub-topics: the contribution of the private sector in developing and supplying affordable and price-competitive products; the role of alternative licensing models (creative commons, free and open source software) in increasing the supply of affordable and high-quality products; the need for new business models based on the Internet; the importance of private sector participation in the formulation of public policies for combating piracy; the role of the private sector in educative campaigns for promoting respect for intellectual property; evaluating protection of intellectual property rights; improving the legal intellectual property framework, seeking direct benefit for the right holder; and the costs for IP holders in developing countries to enforce their intellectual property rights (e.g. patents or copyright) in developed countries or worldwide, where high litigation costs could be viewed as an obstacle to innovation, patenting, trading in or the exercising of their intellectual property rights. It was pointed out that it did not mean that the cost should be borne by governments or national agencies in charge of ensuring enforcement, but rather that the discussion should focus on ways and means of facilitating a respect for intellectual property rights.

15. Taking into account the agreed topic, and the specific elements which the Group coordinators put forward to be addressed, the Secretariat identified a number of experts, including two of the three speakers proposed by GRULAC, to prepare the working documents for, and to make oral presentations at, the fifth session of the ACE which, will take place from November 2 to 4, 2009. In response to the request by the Asia and Pacific Group coordinator, the Agenda includes an item within which to identify and define the elements of an enabling environment for promoting respect for intellectual property on a sustainable basis and to consider the future work of the ACE.

*Global Congress on Combating Counterfeiting and Piracy*

16. In line with the mandate of the ACE and in the framework of the joint initiative entitled “Global Congress on Combating Counterfeiting and Piracy”, WIPO, the International Criminal Police Organization (Interpol) and the World Customs Organization (WCO), with the support and cooperation of the International Chamber of Commerce (ICC), the International Trademark Association (INTA), and the International Security Management Association (ISMA) convened and organized the Fourth Global Congress on Combating Counterfeiting and Piracy. The Congress was hosted in Dubai by WCO and Dubai Customs and took place from February 3 to 5, 2008. The Fifth Global Congress on Combating

Counterfeiting and Piracy will be hosted by Interpol and the Mexican Institute of Industrial Property (IMPI) in Cancun from December 1 to 3, 2009. The theme for the Congress is “Bridging Boundaries for Shared Solutions.” The agenda and more information on the activities of the Global Congress Steering Group are available on the Congress website at <http://www.ccapcongress.net/>

*Technical assistance*

17. Enforcement-related technical assistance and legislative advice was rendered by the Secretariat in response to a large number of requests by Member States, taking into account the specific needs of the countries concerned. An overview of technical assistance provided in the period since the fourth session of the ACE will be reported on during the fifth session of the ACE and is available on the WIPO enforcement website at <http://www.wipo.int/enforcement/en>. The Website, in addition, contains newsletter, case law databases as well as a portal to Member States activities.

*18. The WIPO General Assembly is invited to take note of the information contained in this document.*

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