

## **Advisory Committee on Enforcement**

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#### **PREVENTATIVE ACTIONS AND MEASURES TO COMPLEMENT ENFORCEMENT, WITH A VIEW TO REDUCING THE SIZE OF THE MARKET FOR PIRATED AND COUNTERFEIT GOODS**

*prepared by Amanda Lotheringen, Senior Manager, Copyright and IP Enforcement, Companies and Intellectual Property Commission (CIPC), South Africa\**

#### **INTRODUCTION TO THE REGULATORY ROLE AND FUNCTIONS OF THE CIPC**

1. The Companies and Intellectual Property Commission (CIPC) became a statutory body that functions as an independent agency in May 2011, when the new Companies Act, No 71 of 2008 was promulgated.
2. Formerly the CIPC was part of the Department of Trade and Industry (the **dti**), first as the SAPTO (South African Patent and Trade Mark Office) and SACRO (South African Companies Registration Office) that later became CIPRO (Companies and Intellectual Property Registration Office). When the new Companies Act came into force, it combined CIPRO and the Office for Company and Intellectual Property Enforcement (OCIPE) into a new independent Regulator, to function as a juristic person outside the organs of State, known today as the CIPC.
3. The CIPC has, as its broad legislative mandate, the following areas:
  - Companies, Co-operatives, Trade Marks, Patents & Designs, Copyright and IP and Companies Enforcement.

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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.

- The CIPC has been modernizing for several years but only populated its new structure on September 1, 2013.

4. Some of the enhancements that we are proud of include digitizing many of our Patent records and we have introduced electronic filing of new applications in respect of trade marks, patents, designs and copyright in cinematographic films. There is a strong belief in the CIPC that innovation follows through collaboration.

5. As part of its functions, the CIPC also includes education and awareness, investigations of non-compliance and specific enforcement actions. Top priorities for the CIPC include but are not limited to:

- promoting good governance and credible business conduct that respect the right of shareholders and IP rights holders;
- enhancing our role in promoting South African innovation and creativity;
- need for commercialization of the South African Intellectual Property in general; and
- fostering the potential of Indigenous Knowledge (IK) and the need for its protection and commercialization.

6. As part of the main priority area, in promoting innovation and creativity, a new way of doing business had to be developed. A concept that would be able to speak to and explore alternative measures to promote and protect Intellectual Property Rights (IPR) in South Africa.

## **THE BALANCED APPROACH**

7. This contribution is the result of an invitation from the World Intellectual Property Organization (WIPO) to draft and present a paper to the ninth session of the Advisory Committee on Enforcement (ACE). The objective of the paper is to share national experiences that focus on alternative measures that would lead to preventative actions to complement enforcement. In essence, the approach must be able to balance the scales between creating awareness about the benefits of IPR and serving the public interest.

## **THE NATURE OF COUNTERFEIT GOODS AND PIRACY**

8. There are certainly many problems and risks associated with counterfeiting and piracy. To foster strong collaboration, regular exchanges of information and best practices between Member States, public authorities and stakeholders engaged in enforcement of IPR would enhance the effectiveness of efforts in that regard and mitigate these risks.

9. In finding our balance, we had to realize that enforcement as we were used to it and education and awareness campaigns that were run in isolation just did not deliver the required results. The game plan had to change to keep up with the challenges that law enforcement faces in today's technological age.

10. On the one hand a country has to create awareness of the benefits of a strong IP regulation and protection regime, but also ensure that the general public is aware of the character of the harms that we face when using and consuming counterfeit and pirated products.

11. A similarly important message must also be designed that has as its basis, effective targeted enforcement that is followed by criminal sanctions in appropriate circumstances. Being competitive in the global economy and facing the innovation challenge is not easy for any country, and one of the problem areas is enforcing intellectual property rights. What other methods or remedies can therefore effectively be utilized to support enforcement strategies? How then do we find this delicate balance?

## **COLLABORATION IS THE KEY TO SUCCESS**

12. As part of its new structure the CIPC established a Creative Industries Division, with its focus areas being IP Enforcement, Education and Awareness, Copyright Registration in Films and Visual Recordings and Policy Advocacy and Research.

13. The Division has as its main objectives:

- effective enforcement of qualifying and legally protected IP rights;
- creating awareness with all stakeholders including the general public about the rights and responsibilities of IP;
- educating other law enforcement counterparts in customs and police departments;
- increasing the number of films and visual recordings that are being registered; and
- the proposal is to ensure that we can reinforce the capacity of officials to feed South African policy-makers with the information they need to design effective policies as well as to strengthen enforcement against counterfeiting and piracy across the country.

14. But mostly the newly established unit had to ensure collaboration between role-players. Cooperation was in place through an effective structure that was established called the Intergovernmental Enforcement Committee (IGEC). This structure has been functioning since 2006. This structure ensured effective cooperation between various government departments and the private sector in regard to enforcement. Each party's individual objectives were met, targets were chased and results were obtained.

15. This structure however did not support true collaboration. In true collaboration, joint objectives are identified and shared initiatives are pursued. An important element of true collaboration is having one budget that supports the joint objectives and that will support the desired outcomes. This is especially effective in regard to awareness campaigns, as one strong message that is repeated over a long period of time will most likely result in the required changed behavior.

16. The need to have a different approach to a typical "Anti-Piracy Campaign" was further identified and the concept for the "Be your Own Buy your Own" (BYO<sup>2</sup>) was born.

17. Five focus areas of creativity were identified, being films, music, books, software and electronic games. Copyright plays a major role in these areas, but most of the products are also further protected through registered trade marks. Three key role players that either have active stakes or protect active stakes in the creative industry sector were identified and approached. These "partners" were specifically selected for their potential role to further and protect creations protected by Copyright legislation and hardest hit by the impact of piracy. The partners are two of the most important not-for-profit organizations (NPO's) involved in this space, Proudly South Africa and the South African Federation Against Copyright Theft (SAFACT) and the third

partner, Microsoft, that is experiencing major problems with regard to piracy of software and electronic games, joined the collaboration partnership.

## **AN ALTERNATIVE IDEA**

18. Syncopation in music, involves a variety of rhythms which are in some way unexpected. It makes part or all of a tune or piece of music off-beat. More simply put, syncopation is a general term for “a disturbance or interruption of the regular flow of rhythm”: a “placement of rhythmic stresses or accents where they wouldn’t normally occur”. This is the intention of the BYO<sup>2</sup> campaign, to try an “off beat” way to play an exceptional tune that would make a real difference.

19. Originally the collaboration effort came about to support IPR protection during the Orange African Cup of Nations (soccer tournament) that was played in South Africa during January 2013. The marketing material that was designed was aimed to create awareness about IPR in general. It further had to instill a feeling of trust with visitors from abroad and the general South African public buying and consuming branded products during the time of the African Cup. The importance of IPR for any country’s social economic and cultural development cannot be underestimated and it has been proven through scientific studies. The idea further grew and the collaboration enhanced to grow into a campaign that has its focus area on both awareness and enforcement, BYO<sup>2</sup>.

20. Creativity is an attribute that is seen as a universal resource, and all people of the world possess elements of creativity that could be fostered and developed to ensure not only personal growth but also possible commercial benefit. Creativity as a focus area was therefore the best choice in regard to a developing country such as South Africa to run a campaign of this nature.

## **HOW DID WE GO ABOUT DOING IT**

21. A soft launch for BYO<sup>2</sup> was planned for April 26, 2013, World Intellectual Property Day that is celebrated worldwide. The day afforded an opportunity to test some of the ideas and concepts on a specific target market. Celebrating World IP Day at two Universities, one in Pretoria and one in Stellenbosch, started to take form. Other relevant partners were co-opted and IP Festivals were arranged.

22. Moving away from the anti-piracy concept also envisaged that people could become excited about IPR, and not only be scared about the consequences of abuse or misuse of IPR. This was achieved by sharing the benefits, the rights and responsibilities. They could freely celebrate IPR and their own creativity through competitions and showcasing local creative talent.

23. Moving away from the traditional anti-piracy concept, a concept that has as its focus the harms and consequences of piracy and counterfeiting, also meant that we had to create an alternative message. A message that supports the positive side of IPR had to be constructed. This message had to reward good behavior and serve as a method to influence the demand for unwarranted products and change consumer behavior. It includes a number of alternative efforts with different messages and ways to make it easier for the general public to do the right thing.

## **CELEBRATING SUCCESSES: TWO STRONG LEGS FOR EFFORTLESS MOVEMENT**

24. Universities are good partners in any effort to promote respect for IPR. Students and scholars also fit the profile of the target market and usually the availability of free internet with high-speed connection makes it easy for them to download products.

25. Both Universities supported the efforts wholeheartedly through their respective Law Faculties and both had an IP Chair that also supported the awareness initiatives. Targeted enforcement actions were also easier to facilitate from the central hub through which the intranet of the Universities operated.

26. Worldwide celebrations on April 26, celebrated the invaluable contributions made by innovators and creators across the globe. World IP Day 2013 focused on “Creativity: The Next Generation”. Students were invited to come and see how IP works and contribute towards the flourishing of movies, music and the arts – and how it drives the technological innovation that helps shape our world.

27. The celebrations became very festive and turned out to be a great success. During the week leading up to Friday, April 26, coverage was obtained on two early morning breakfast shows. The message was packaged with a positive angle and “anti” turned into the new concept, namely “rewarding good behavior” and the new buzz-word for the conservation of ideas, as cornerstones for creativity.

28. The theme of the World IP Day 2013 fitted perfectly into BYO<sup>2</sup> objectives and lent itself to showcase the collaboration effort. The day reminded all of the greater role ideas and creativity have on the society and economy at large. A developing economy like South Africa must protect innovation and creativity at all cost, and understand the importance of guarding original artists and innovators’ rights to intellectual property protection.

29. The activities on the day were designed as a “sneak preview” for BYO<sup>2</sup> that are likely to be launched on April 26, 2014. Linked to the BYO<sup>2</sup> messages was also the idea to encourage positive behavior, and discourage the copying of copyright protected goods. “Be Your Own” contain elements that relate to IP protection such as “Do your own thing, be an original, have an identity, be the best you can be, be honest and respect your own identity”. In doing so, you would also respect the IP of others. The messages are also about stimulating innovation, to create new things, be an original and support originality. In the end, it is also about supporting local creativity and products to grow our economy. Being a proud individual and proudly support South African products. “Buy your own”, further have principles embedded such as, do not copy or share illegally.

30. Similar importance was given to proactive combined enforcement operations that were conducted in the weeks leading up to April 26. These targeted operations had as its focus the internet. It saw the establishment of a Cyber Crime Action Group that works very closely with internet service-providers to serve “take down notices” on pirate sites.

31. In support of the enforcement actions, it became a necessity that CIPC promote the registration of all films, and visual content products in terms of the Cinematograph Films Act, 1977. Should a right holder wish to approach a civil or criminal court, the simple proof of having a registration certificate available makes the legal process easier and quicker, and also more reliable.

## CONCLUSION

32. A healthy athlete requires two strong legs to be able to compete competitively. Reducing the size of the market for counterfeited and pirated goods requires alternative and innovative ways and in essence, it requires a balanced approach. If both legs of an athlete are not developed and trained, the athlete will not be able to move forward at a competitive speed. It therefore becomes crucial to balance effective enforcement and to create a level of awareness encouraging a change of behavior that will diminish the demand for pirated products.

33. The trial runs conducted in 2013 really indicated that this alternative approach to anti-piracy efforts is paying off dividends. At both Universities an opening event was arranged targeted at the media. CEO's of partner organizations conveyed messages to support the objectives of the day. Interviews were also granted at both University radio stations. The festivities were further supported by craft markets, where members of Proudly SA exhibited locally produced products of a creative nature.

34. Free legal advice was also offered to students that enthusiastically made use of the opportunity. Academics and dedicated experts from various law firms offered their expertise free of charge for the day. The media coverage and impact of the day was assessed and overall reach was determined to have been exceptionally high. One of the joint objectives of the partnership is the collection of statistics to help assess the extent of the counterfeiting and piracy problem. In future, a task team that will be hosted within the Policy Analyst Department in Creative Industries of CIPC will be dedicated to develop and apply efficient and common methodologies to measure the scale and socio-economic impacts of counterfeiting and piracy within South Africa.

35. Through the joint efforts of all the [co]partners to drive a balanced approach forward, it is hoped that one of the most successful public-private partnerships will be cemented to drive both awareness and respect for IPR, through targeted enforcement actions. As a final word, I wish to again emphasize:

*A tree that reaches past your embrace grows from one small seed*

*A structure over nine stories high begins with a handful of earth (Tao Te Ching 64)*

*Do the difficult things while they are easy and do the great things while they are small.  
A journey of a thousand miles starts with a single step - (Tao Te Ching 64) - Lao Tzu*

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