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WORLD INTELLECTUAL  
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## **WIPO NATIONAL WORKSHOP FOR JUDGES**

organized by  
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**DIFFICULTIES IN THE ENFORCEMENT OF  
INTELLECTUAL PROPERTY RIGHTS AND POSSIBLE SOLUTIONS**

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**Why are there problems in enforcement of intellectual property ?**

Intellectual property law deals as such with intangible matters. It does not deal with ownership of tangible matters but with rights in a spiritual content. To enforce rights in such intangible matters poses of course certain problems.

The problems seem to be of three kinds.

The first problem area lies exactly in the fact that the law deals with intangible matters which are not easy to grasp immediately.

The second problem area lies in the practical difficulties in finding ways to make police, prosecutors and other law enforcement officials aware of the issues and interested in taking efficient action.

The third lies in the fact that sometimes political and economic interests oppose actions against piracy and counterfeiting.

**Problem 1: Copyright concerns intangible matters**

The fundamentals of copyright law are comparatively easy to understand. Stated in a simplified form, the law grants exclusive rights to authors in order to stimulate creativity. Thus the basics are comparatively easy to understand.

What is more difficult is the technically complicated structure of the law. This is due to primarily two factors. One is that the society is becoming more complicated and the technology has become more sophisticated and thus the law very complex. The other one is that the international conventions and in particular the TRIPS Agreement have set standards which in themselves makes the law more complex.

This situation means that it is not always easy to make the law understandable to the general public. It is, for instance, not easy for the public to understand and accept that a CD which someone has bought can not be played freely on the radio or in public places (because this is a public performance under copyright law), or that it would not be allowed to photocopy works freely in schools.

It also means that it is not always easy for judges who are not specialised in the field to grasp the mechanisms of copyright law and to implement them properly.

Which is then the solution?

As far as the judiciary is concerned, part of the solution is to understand the rationale for copyright law. It is there in order to stimulate creativity, offer protection for authors economic and moral interests and also to form a necessary condition for transfer of certain kinds of technology. Consequently, copyright law is not an end in itself but is there to serve certain interests. It is with this in mind that the judge has to look into the law and apply it in concrete cases.

**Problem 2: How to make the enforcement authorities interested in intellectual property?**

Of course enforcement authorities have many priorities and copyright may not be on top of the list. It happens also in the countries of the West that police and public prosecutors are uninterested in violations of intellectual property law for the simple reason that they ignore or do not understand it and they have other priorities.

There is certainly no easy solution to this problem.

One solution is to devote money and resources to training activities directed at enforcement officials. Such activities have been undertaken in a number of countries and have given fairly good results.

Another solution is to show the close links which sometimes exist between piracy of, for instance CD's and computer programs and organised crime. Information available shows that a certain number of illegal activities, including terrorism, are financed from piracy activities. Those are comparatively easy to carry out, yield considerable returns and are generally not particularly risky as the sanctions are normally much weaker than in the case of, for instance, drug trafficking.

### **Problem 3: Forces opposing actions against piracy/counterfeiting**

In certain countries considerable interests are involved in piracy and counterfeiting activities which form part of what one could call "the alternative economy." Those interests are sometimes politically well connected. Because the economic stakes are sometimes very high, the perpetrators do not hesitate to use violent measures to defend their interests. It could consequently be difficult for the enforcement authorities to act properly in such situations.

### **WIPO enforcement activities**

The World Intellectual Property Organization (WIPO) has set up an Advisory Committee on Enforcement of Intellectual Property. This Committee has no normsetting power but its aim is rather to provide advice and information in enforcement matters. Information about the Committee can be accessed at the WIPO website ([www.wipo.int](http://www.wipo.int)). At the latest session of the Committee presentations were made by a number of Supreme Court judges and other high officials from different countries about enforcement problems. Those presentations are now available also in the Arabic language at the website.

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