

WIPO



WIPO/ACE/5/11

ORIGINAL: English

DATE: November 4, 2009

WORLD INTELLECTUAL PROPERTY ORGANIZATION

GENEVA

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ADVISORY COMMITTEE ON ENFORCEMENT

Fifth Session

Geneva, November 2 - 4, 2009

CONCLUSIONS BY THE CHAIR

1. The fifth session of the Advisory Committee on Enforcement (ACE) was opened by the Director General of WIPO.
2. The Committee unanimously elected, for one year, Mrs. Rodica Parvu, Director General of the Copyright Office of Romania, as Chair.
3. The Draft Agenda (document WIPO/ACE/5/1 Prov. Rev.) was adopted as proposed.
4. Delegations expressed their appreciation of the ACE as a valuable international forum for balanced discussions on building respect for intellectual property, and for developing sustainable and practical deliverables, taking into consideration Recommendation No. 45 of the WIPO Development Agenda.
5. The Secretariat introduced document WIPO/ACE/5/2 on recent activities of WIPO in the field of intellectual property enforcement, including the Global Congress on Combating Counterfeiting and Piracy. The Committee took note of the considerable number of WIPO training, cooperation and other activities mentioned in that document, and encouraged these efforts of the Secretariat. The Committee recommended that the Secretariat should continue and increase its activities, in cooperation with other organizations and the private sector. In that context, it was emphasized that the Secretariat should continue its efforts to ensure that the inclusive approach of WIPO to building respect for intellectual property be fully reflected in all its activities, including those carried out in cooperation with partner organizations.
6. The Committee heard the presentations by eight speakers, focusing on different elements of the agreed topic of the fifth session of the ACE, namely 'Contribution of, and costs to, right holders in enforcement, taking into consideration Recommendation 45 of the WIPO Development Agenda'. Among the specific issues that were dealt with in the

presentations were, *inter alia*, suggestions for closer analysis to give meaning to Recommendation No. 45 of the WIPO Development Agenda, such as the effects of seizures of goods in transit; safeguards in relation to provisional measures; the scope of criminalizing intellectual property infringements; and possible abusive enforcement practices, such as in the context of competition law, unjustified threats to sue, and the abuse of intellectual property enforcement procedures. The presentations also approached intellectual property enforcement from an economic perspective, including with a view to welfare and other effects of the various intellectual property infringements; the availability and credibility of available empirical evidence; and the problem of financing often expensive intellectual property litigation, especially for litigants in developing countries. In the latter respect, some speakers suggested establishing funds that could be used to assist parties in need, for instance on the basis of proceeds of crime or intellectual property filing fees, while drawing attention to the need of a careful management of such funds in order to avoid abuse. Moreover, attempts of right holders to limit enforcement costs were discussed, including with a view to sharing legal and investigation costs, and to strengthening public-private cooperation in intellectual property enforcement through the provision of training for law enforcement agencies and of comprehensive product identification material. In that context, it was also suggested that out-of-court settlement, especially in the context of customs cases, should be further explored in practice. The presentations further addressed development-oriented activities of right holders, such as in education, job creation and community projects. In the context of analyzing the question of respect for intellectual property, the involvement of organized crime in the international trade in infringing goods was also examined, including with a view to the role of confiscation as an enforcement option.

7. In the discussions following the presentations a number of observations were made and questions were raised. Appreciation was expressed for the presentations which underscored the need for a balanced, inclusive approach to intellectual property enforcement, taking into consideration the diverging national socio-economic realities. Some delegations raised questions as to pricing policies and their possible effects on the scale of counterfeiting and piracy; the underlying reasons for counterfeiting and piracy, including with a view to the levels of development in general, and the acceptance of the intellectual property system in countries with relatively small locally produced intellectual property assets; the advisability of targeting producers rather than small scale distributors; the importance of the assistance by right holders not only in enforcement action, but also in the context of awareness-raising programs and the establishment of a constructive dialogue with consumer groups.

8. The chair took note of the information about the establishment, by the European Union, of an intellectual property enforcement observatory. The new body aimed to provide, in partnership by public authorities, the private sector and consumer groups, an EU-wide mechanism for the collection of enforcement-related data, the sharing of information, and the suggestion of solutions and best practices. Further, the chair took note of the information provided by the Centre for International Intellectual Property Studies (CEIPI). The institute was currently undertaking an analysis of criminal intellectual property enforcement, including with a view to legal, historical and cultural aspects, to be published in the course of 2010.

9. Under agenda item 7, the Committee discussed the suggestions contained in the papers presented by the delegations of Pakistan, entitled 'Creating an enabling environment to build respect for IP'; of Brazil, entitled 'Future work proposal by Brazil'; and of Group B, entitled 'Elements of a General Framework for future discussions in WIPO ACE', respectively. In that context, the chair invited Mr. Carsten Fink, Chief Economist of WIPO, to respond to a

number of questions and concerns raised by delegations, including with a view to the feasibility of undertaking an empirical assessment of the nature and extent of intellectual property infringements, and the availability and reliability of respective data.

10. The Committee took note of the proposals suggested by Member States for discussion at future sessions of the Committee, including those contained in the three papers referred to under paragraph 9, above, which are annexed to these conclusions, as well as proposals from the floor. The proposals will serve as a basis for the selection of topics for discussion by the Committee at its future sessions, to be agreed by consensus by the Members of the Committee, in line with the mandate of the Committee.

11. The Committee underscored the importance that the issues and concerns discussed at the sessions of the ACE would guide the inter-sessional work of the Secretariat.

12. The Committee agreed to consider, at its sixth session, the following topic:

‘Developing on the substantive study contained in WIPO/ACE/5/6, analyze and discuss IPRs infringements in all its complexities by asking the Secretariat to undertake:

1. A literature review of methodologies and gaps in the existing studies;
2. Identification of different types of infractions and motivations for IPR infringements, taking into account social, economic and technological variables and different levels of development;
3. Targeted studies with an aim to developing analytical methodologies that measure the social, economic and commercial impact of counterfeiting and piracy on societies taking into account the diversity of economic and social realities, as well as different stages of development;
4. Analysis of various efforts, alternate models and other possible options from a socio-economic welfare perspective to address the counterfeiting and piracy challenges’.

13. The chair noted that it was the understanding of Group B that the topic referred to under paragraph 12, above, would be implemented within existing budgetary resources. The chair further noted that some delegations of GRULAC as well as the delegations of Pakistan, Oman, South Africa, India, Egypt and Algeria noted that it was beyond the scope of the Committee to refer to, or decide on, budgetary resources.

14. The chair noted the request by the delegations of Egypt and Oman to have document WIPO/ACE/5/6 translated into Arabic.

15. The Committee adopted the Conclusions by the Chair, set out in paragraphs 1-14, above.

[Annexes follow]