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WIPO GENERAL ASSEMBLY

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Geneva, September 27 to October 5, 2004

MATTERS CONCERNING THE ADVISORY COMMITTEE ON ENFORCEMENT

Document prepared by the Secretariat

1. At its Thirtieth Session held from September 22 to October 1, 2003, the WIPO General Assembly noted the Conclusions by the Chair of the Advisory Committee on Enforcement (ACE) on its first session, held from June 11 to 13, 2003, and encouraged the ACE to continue its work (WO/GA/30/8, paragraph 55 (i)).
2. This document contains information on the second session of the ACE, which was held in Geneva from June 28 to 30, 2004. The session was attended by representatives from 62 Member States, three intergovernmental and 13 international non-governmental organizations.
3. As agreed in the first session (document WIPO/ACE/1/7 Rev., paragraphs 16 to 18), the discussions in the second session of the ACE followed the principle of a thematic approach, and focused on the role of the judiciary and quasi-judicial authorities, as well as of the prosecution, in enforcement activities, including related issues such as litigation costs. In that context, the Committee heard seven presentations which examined, *inter alia*, the issue of specialization of the judiciary; the question of determination of damages in different legal systems; the costs of intellectual property litigation and concepts to reduce these costs; quasi-judicial procedures; and criminal sanctions and procedures.

4. The Committee also discussed recent activities of WIPO in the field of intellectual property enforcement; matters concerning the electronic exchange of information; and the future work of the Committee. It was agreed that the third session in 2005 should focus on the issue of education and awareness-building, including training, concerning all factors relating to enforcement, primarily those indicated in requests for assistance by Member States.

5. The Chairman, Mr. Henry Olsson, Special Government Adviser, Ministry of Justice, Sweden, summarized the discussions of the Meeting in the Conclusions by the Chair (WIPO/ACE/2/13), which were adopted by the Committee. The said Conclusions are reproduced in the Annex to this document.

6. The WIPO General Assembly is invited to take note of the information contained in this document and its Annex.

[Annex follows]

ANNEX

CONCLUSIONS BY THE CHAIR

Introduction

1. The second session of the Advisory Committee on Enforcement (ACE) was opened by Mr. Wolfgang Starein, Director, Enforcement and Special Projects Division, who welcomed the participants on behalf of the Director General and also acted as Secretary.
2. The Committee unanimously elected, for one year, Mr. Henry Olsson, Special Government Adviser, Ministry of Justice, Sweden, as Chair. Mr. Jie Liu, Deputy Director General, Copyright Department, National Copyright Office, Beijing, China, was elected as Vice-Chair.
3. The Draft Agenda (document WIPO/ACE/2/1 Rev.) was adopted as proposed.
4. The Committee dealt with two pending issues from the first session of the ACE:
 - 4.1 As regards the request for admission of the European Communities as a non-voting Member of the Committee, no consensus was reached in the course of informal consultations. As the Delegation of the European Communities maintained its request, the Committee decided to keep the issue on the agenda for its next meeting pending the outcome of further informal consultations.
 - 4.2 The Committee decided to admit the Civil Society Coalition, a non-governmental organization (WIPO/ACE/2/10), as an *ad hoc* Observer.
5. The Committee heard seven presentations, based on documents WIPO/ACE/2/3 to WIPO/ACE/2/9, on the role of the judiciary and quasi-judicial authorities, as well as of the prosecution, in enforcement activities, which also included related issues such as litigation costs. The presentations, *inter alia*, underscored the role of judiciary in the enforcement of intellectual property rights; parallels between civil and common law legal systems; the usefulness of administrative procedures in the enforcement of intellectual property rights; and criminal procedures and sanctions. Two Member States submitted additional documents (WIPO/ACE/2/11 and WIPO/ACE/2/12) outlining elements of their national experiences related to intellectual property matters. It was noted, in this context, that the circumstances of each Member State were different, and that while useful ideas were contained in the presentations made before the Committee, the Committee did not draw general conclusions from those presentations. At the end of the discussions of the Committee, the following Conclusions by the Chair, in paragraphs 6 to 22, below, were approved by the Committee.

Conclusions by the Chair

6. The Members of the Committee agreed that the issue of enforcement of intellectual property rights was of great importance and expressed their appreciation for the ACE as a forum for discussion on enforcement matters, in particular because the mandate thereof provided for technical assistance and coordination, cooperation and the exchange of information, while reiterating that norm setting was excluded therefrom.

7. The Committee noted the particular role of the judiciary in the enforcement of intellectual property rights.
8. The Committee discussed the issue of specialization of the judiciary, and particular interest was expressed in the different ways in which Member States address this matter. Also the necessity of having a “specialized” judiciary to effectively and cost-efficiently adjudicate upon intellectual property disputes was emphasized by some delegations, whereas a number of other delegations emphasized the difficulties surrounding the establishment of specialized courts. While specialization of the judiciary could also be achieved by concentrating intellectual property litigation within existing judicial structures, one delegation indicated that the creation of specialized intellectual property courts could under certain circumstances ensure a more effective enforcement than a simple concentration of cases. The Committee agreed on the global importance of continued judicial training in the field of intellectual property and on the sensitization of the judiciary at the different judicial levels.
9. The Committee took note of and considered the different legal approaches in Member States including the role of both the civil and common law systems in the field of enforcement.
10. The Committee discussed the question of the determination of the quantum of damages in the different legal systems.
11. Some members of the Committee discussed the cost of intellectual property litigation and viewed it as a concern for an effective system of intellectual property enforcement. In this regard, different concepts of how to reduce litigation costs were presented and discussed, including those related to the importance of effective case management by the judiciary; the integration of mediation procedures within judicial structures; and the streamlining of procedures in intellectual property litigation.
12. Following consideration of administrative procedures in some of the Member States, it was suggested that quasi-judicial procedures had the potential of contributing to more affordable and time efficient enforcement.
13. It was noted that right holders had an important role to play in enforcement actions, including obtaining evidence and identifying infringing goods.
14. The Committee emphasized the role of the judiciary in balancing private rights and the public interest in enforcement.
15. The Committee noted the reform of criminal procedures and sanctions in a number of Member States.
16. The Committee noted the concern expressed by some Members over the unilateral assessment of piracy rates in their territories.
17. Following reiterated requests by a number of Member States, the Secretariat undertook to make documents WIPO/ACE/2/1 to 13 available in Arabic.

18. The Committee noted with particular satisfaction the considerable number of WIPO expert missions, training and study visits, seminars and workshops, as well as other activities mentioned in document WIPO/ACE/2/2. Some comments were made concerning the distribution of those activities between different regions and the need to ensure a fair balance in this respect.

19. One delegation underlined the need to indicate clearly in the documents the situations when Member States have contributed to WIPO activities in the area of enforcement.

20. As regards future work, a number of proposals were made and discussed. These proposals included, *inter alia*, and only by way of example, issues concerning education and awareness building; further discussion of some specific issues raised in the course of the discussion under agenda item 4; border enforcement measures; examination of the impact of enforcement activities in developing, industrialized and transition countries; the issue of privacy and enforcement; the development dimension in relation to enforcement, including the need to take into account the broader context of society interests and obligations; cost/benefit aspects of enforcement in developing countries; facilitation of access by nationals of developing countries to the IP systems in industrialized countries; enforcement in relation to competition law; cooperation between States in the field of enforcement; and alternative dispute resolution and conciliation procedures.

21. Following an extensive discussion and informal consultations, the Committee decided that its Third Session in 2005 should consider the issue of education and awareness-building, including training, concerning all factors relating to enforcement, primarily such that are indicated in requests for assistance in this area by Member States.

22. The Committee approved the proposal made by the Secretariat in paragraph 6(i) of document WIPO/ACE/2/2 on the understanding that the sources of the information are clearly indicated. Following a discussion on paragraph 6(ii) of the same document, the Committee agreed to revert this issue to the next session of the ACE.

23. The Committee adopted the Conclusions by the Chair, set out in paragraphs 6 to 22, above.

[End of Annex and of document]