

# **ENFORCEMENT OF IP RIGHTS IN THE DIGITAL ENVIRONMENT CONCERNS, CHALLENGES AND ACTIONS REQUIRED FOR THE PROTECTION OF THE SINGLE MARKET**

## **GRUR – Workshop**

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### **Overview:**

1. General considerations: Concerns and challenges
2. Summary of the suggestions made at the Third Global Congress
3. WIPO's activities in the field of combating piracy. The way forward:  
Actions required

### **1. General considerations: Concerns and challenges**

The continuing development of technology, from photocopying machines to computers and the world-spanning expansion of the Internet, has made it easier to obtain information and data about products, including high-tech ones, like pharmaceuticals, electronic chips, software and the like. While trade has become internationalized, and regional economic integration has led to dismantling of borders, in order to ease trade flows; efforts to combat counterfeiting and piracy have been lagging behind. Counterfeiting and piracy hamper the growth of national economies, depriving legitimate enterprises of business activity, citizens of legitimate employment, and the state of revenues. The phenomenon deters investment and innovation, creates health and safety risks and undermines employment. On a transnational scale, counterfeiting and piracy often involve and sustain organized crime and in some instances provide funding for terrorism.

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The concerns that we are facing in the digital environment are largely due to the absence of territorial limits on the Internet and the anonymity that it offers. On one hand trademark infringements are common on the Internet through abusive or illegal uses of marks in domain names or on websites. On the other hand, massive amounts of copyright protected digital material (music, movies, scientific articles, fiction) are traded via the Internet through otherwise legitimate business platforms such as: special sites, sites offering original products, online auctions houses or through online distribution without the consent of the owner from illegal sites and/or through file-sharing networks using mp3 formats and P2P technology.

Piracy is one of the major contemporary challenges to the protection of copyright and related rights because of its negative economic and social consequences. Awareness about the negative effects of infringement of IP rights is needed across all strata and institutions in society. It is, by its very nature, extremely difficult to put a figure on illegal activity of this kind; this phenomena does not stop at the EU's external borders and recent studies and statistics provide evidence of increasing counterfeiting and piracy not only on traditionally profitable luxury goods but also of everyday low-cost but high volume items like CDs, DVDs, foodstuffs and the like.

In the digital environment, we are also facing legislative challenges: the online dimension of IP enforcement, infringements carried out over the Internet pose very specific obstacles to effective enforcement which are not addressed in the TRIPS Agreement (in spite of the fact that its provisions apply to the digital environment) or in any other global treaty. I will mention only some of these obstacles: the identification of the infringer, liability of service providers, the enforcement of IP rights versus online uses of rights protected abroad and where to sue an infringer. An area where piracy is a growing phenomenon is

broadcasting; signal theft and unauthorized retransmission on the Internet is especially rampant with respect to sports programming.

The enforcement of IP rights is a collective duty. Right holders have to do their part; they have to cooperate with enforcement authorities and promote the rule of law. In most cases, we do not need more laws in the statute books. Member States themselves must make a positive effort to “give life” to the legislative framework and enforcement mechanisms. Notwithstanding that, it is the judiciary that has the most important part. Members of the judiciary must be fully aware of the destructive economic consequences of IP crimes, and of their duty to call for clear and severe punishments to be included in national law. (e.g. the amended proposal for a Directive of the European Parliament and of the Council on criminal measures aimed at insuring the enforcement of IP rights discussed on February 26 and 27, 2007 besides Directive 98/84/EC from 1998)

## **2. Summary of the suggestions made at the Third Global Congress under the focus area: Promoting better legislation and enforcement**

Firmly believing that “a right without a remedy is not a right,” and with the confirmed mandate of our Member States to cooperate with their Governments, with Organizations and with the private sector to combat counterfeiting and piracy, WIPO is playing a proactive role in the international enforcement arena. WIPO is no longer simply reacting to situations, but we are also trying to preempt them. This approach in the fight against counterfeiting and piracy is also reflected in the active lead taken by WIPO through its *Enforcement and Special Projects Division*. Together with other stakeholders, WIPO aims to assist in developing effective government and industry anti-counterfeiting and piracy strategies, with a focus on awareness raising, legislative assistance, improved cooperation and coordination, and capacity building.

One of the most important features of the international cooperation in combating counterfeiting and piracy is the emerging partnership between governments, the private sector and NGO's, as the civil society is increasingly concerned with protecting the rights of both IP holders and consumers. (e.g. The First and Second Global Congress as well as the four regional Congresses)

On January 30 and 31, 2007 WIPO hosted in Geneva the **Third Global Congress** on combating counterfeiting and piracy under the theme: "Shared challenges-Common goals". The suggestions highlighted under the focus area "Promoting better legislation and enforcement" should be considered as items for discussion and potential action:

- Integrate efforts to identify solutions to the growing challenges of trade in counterfeit and pirated goods over the Internet including the special problems caused by these activities relating to detection and enforcement. Self-regulation should be considered as a supporting tool for enforcement;
- Formulate and/or finalize guidelines for global protection of IP rights, such as the WCO Framework of Standards, promote and support their wide adoption by governments to further strengthen national customs administrations in their efforts to combat counterfeiting and piracy; collect and make available good practices on how to effectively combat counterfeiting and piracy. Consider how these good practices should be promoted and implemented;
- Analyze and, as appropriate, eliminate jurisdictional inconsistencies concerning judicial interpretation of law, for example in the context of the release of goods and the issue of parallel importation;
- Encourage governments to strengthen civil remedies and procedures and provide more adequate compensation for right holders through appropriate methods, to further develop and clarify legal standards for the availability of civil remedies, including damages and their calculation, and procedural law

as well as reduce litigation costs for the use of the civil system to enforce IP rights.

- Consider defining commercial scale IP violations as serious economic crimes to fully reflect the current dimension of counterfeiting and piracy and encourage the review of sanction structures to ensure that they are strong enough to serve as effective deterrents, and invite courts and competent administrative authorities to use criminal sanctions;
- Examine whether consumers should also be penalized for purchasing and/or possession of counterfeit and pirated products in countries that don't already have such measures;
- Enhance efforts and actions against importers and distributors of counterfeit and pirated products in developed countries, particularly those that obtain such goods from cheap manufacturing sources in less developed countries;
- Explore the Japanese Government proposal to develop a treaty or protocol focusing on IP crime either separately or in connection with another international instrument, e.g., on organized crime in general;

### **3. WIPO's activities in the field of combating piracy. The way forward: Actions requested**

WIPO has a long and distinguished history of serving the international community in the area of Intellectual Property, as well as playing a pivotal role in the global community in ensuring the balanced, dynamic and creative development of the international IP system. Its work in promoting the development and application of internationally agreed norms and standards to protect intellectual property relies on the Member States' success in adopting and enforcing legal provisions. Good co-operation among national authorities and other international intergovernmental organization such as WTO, WCO, WHO and Interpol is vital for capacity building and increased integrity.

WIPO, through its Enforcement and Copyright Law Divisions, will continue to assist Member States in strengthening, upon request, their systems and infrastructure for the enforcement of IP rights through:

- Supporting the implementation of an efficient international legal framework and of efficient regional or sub-regional as well as national enforcement systems; (Broadcasting treaty – status and future actions and EU Directives on enforcement of IP rights are valuable sources of inspiration for future work);
- Enhancing knowledge and experience of law enforcement officials in handling enforcement matters through structured and “tailor-made” training courses;
- Identifying issues of common global concern in the field of enforcement of IP rights and the combat of counterfeiting and piracy through providing studies on the criminal sanctions, calculation of damages and border measures; analyzing the exchange of views on cooperation and coordination at the international, regional and national levels in the field of enforcement and reflecting the emerging trends in the field;
- Organizing, participating and sharing technical expertise and information to make enforcement action more coherent and effective.

According to its mandate and through all its activities, WIPO will continue to provide a forum for its Member States to discuss these issues, to take concrete and pro-active steps to render the enforcement chain more effective in order to improve the handling of IP disputes and to assist in setting up appropriate mechanisms to combat counterfeiting and piracy efficiently, as well as to increase cooperation at the national, regional and international levels and to enhance capacity building, strengthening the partnerships between the public and private sectors.

Thank you.