



Effective enforcement of IP rights – an international perspective

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Presentation

- I. Counterfeiting and piracy – a business concern worldwide
- II. Initiatives to combat counterfeiting and piracy at the international level



I. Counterfeiting and piracy - a business concern worldwide

- Growing piracy and counterfeiting rates worldwide
 - OECD 2007: 2% of world trade in goods
 - Seizures of counterfeit goods at EU external borders:
 - 75,000,000 in 2005
 - 250,000,000 in 2006
- Today almost every kind of product concerned
- Shift from luxury items to consumer goods
- Growing trade in fake pharmaceuticals
(WHO 2007: scope of fake pharmaceuticals from 1% in industrialized countries to 10%-30% in some developing countries)
- Expanding distribution channels for counterfeit/pirated products
(e.g., infiltration of legitimate supply chains, Internet distribution)
- Significant role of criminal networks



I. Counterfeiting and piracy - a business concern worldwide

- Special role of China:
 - Main source (over 80%) of all counterfeit goods seized at the European external borders (TAXUD 2007)
 - US-China WTO dispute over IP enforcement issues (pending)
 - Dynamic developments at the national level



I. Counterfeiting and piracy - a business concern worldwide

- Effects on businesses:
 - Loss of sales volume
 - Damage to brand reputation or image
 - Enforcement-related costs (product protection, packaging, investigation, litigation+legal advice, awareness)
 - Potential reduction in scope of business (geographic, product)



I. Counterfeiting and piracy - a business concern worldwide

- SMEs face particular challenges:
 - Often: rights not registered
 - Less resources to cope with complex enforcement-related strategies and costs
 - EU SME survey 2007: common perception among European SMEs that effective enforcement abroad was impossible, “may just as well give up”



II. Initiatives at the international level to combat counterfeiting and piracy

The role of WIPO

- The international policy dialogue
- Assistance to Member States
- Cooperation with other international stakeholders



The international policy dialogue

The WIPO Advisory Committee on Enforcement (ACE)

- Created in 2002
- Forum for WIPO Member States to
 - exchange country experiences,
 - coordinate to combat counterfeiting and piracy, including with the private sector
 - provide technical assistance.
- Mandate excludes norm-setting. Request for review of the mandate in 2007
- Impact of the « ACTA » negotiations on a new anti-counterfeiting trade agreement, launched in November 2007 by Canada, the EU Member States, Japan, Korea, Mexico, New Zealand, Switzerland and the U.S.

The international policy dialogue

The Global Congress on Combating Counterfeiting and Piracy

- Public-private partnership by WIPO, Interpol, World Customs Organization, ICC, INTA, and ISMA, launched in 2004
- Objectives:
 - to raise the anti-counterfeiting/-piracy issue on the global political and business agenda,
 - to develop suggestions for more effective anti-counterfeiting/-piracy action in various respects, including legislation, cooperation and intelligence sharing, capacity building, and awareness-raising

The international policy dialogue

The Global Congress on Combating Counterfeiting and Piracy

- Fourth Global Congress held from February 3-5, 2008, in Dubai: special focus on health and safety risks, Internet piracy, and the role of Free Trade Zones (FTZ) in the trade of counterfeit/pirated goods

WIPO's assistance to Member States

Legal advice in IP enforcement matters

- Upon request by a particular Member State
- Basis: enforcement-related obligations and flexibilities under the TRIPS Agreement (part III) and WIPO treaties
- Trend: increasing consideration of «plus» standards in national legislation, e.g.:
 - Civil remedies: damage assessment (account of profits, license analogy), «freezing injunctions », discovery of names, liability of Internet service providers, etc.
 - Border measures (ex officio, export control)
 - Criminal sanctions: scope of criminalization, sentencing options, etc.

WIPO's assistance to Member States

Reasons:

- Increased awareness at national level
- The role of IP enforcement in recent Bilateral Free Trade Agreements (FTAs)

WIPO's assistance to Member States

Training courses

Specific IP enforcement training courses/workshops (some 35 in 2007) for judges, magistrates, customs and police officials, government representatives, IP attorneys, representatives from the business community and consumers groups, organized in all regions, in cooperation with national authorities and other IGOs and NGOs

Publication of training materials and case books

<http://www.wipo.int/enforcement/en/publications.html>

WIPO's assistance to Member States

Information exchange

- WIPO Enforcement newsletters

<http://www.wipo.int/enforcement/en/news/>

- WIPO database of case law links

http://www.wipo.int/enforcement/en/case_law.html

- Portal to Member States' online information

http://www.wipo.int/enforcement/en/member_states.html

Cooperation with other international stakeholders

Example: Counterfeit medical products - the IMPACT taskforce

- Created in 2006 under the auspices of the World Health Organization (WHO); members are national health and enforcement authorities, international organizations, and pharmaceutical manufacturers
- December 2007: adoption of « Principles » for effective anti-counterfeiting legislation; recommendations to national law-makers concerning obligations of manufacturers and distributors; prohibited acts; and sanctions that should be available



Thank you

<http://www.wipo.int/enforcement/en/>