

## Advisory Committee on Enforcement

### Ninth Session

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PREVENTIVE ACTIONS, MEASURES OR SUCCESSFUL EXPERIENCES TO COMPLEMENT ONGOING ENFORCEMENT MEASURES WITH A VIEW TO REDUCING THE SIZE OF THE MARKET FOR COUNTERFEITED OR PIRATED GOODS

*prepared by the Secretariat*

#### I. INTRODUCTION

1. Guided by [Strategic Goal VI](#) “International Cooperation on Building Respect for Intellectual Property (IP)” and by [Recommendation 45 of the Development Agenda](#), the World Intellectual Property Organization (WIPO) undertakes activities to foster international cooperation among Member States and other stakeholders to build respect for IP rights in the context of broader societal interests and especially development-oriented concerns.

2. The dialogue in the Advisory Committee on Enforcement (ACE or the Committee) has indicated that attaining proper balance in building respect for IP policy, combining repressive and preventive measures, is critical to achieving outcomes that respond to the diverse needs and interests of Member States and stakeholders to strengthen the IP-legitimate market and to improve IP-compliance. Thus, the Committee, as part of the work program of its ninth session, will address: “Preventive actions, measures or successful experiences to complement ongoing enforcement measures with a view to reducing the size of the market for counterfeited or pirated goods.”

## II. PREVENTIVE ACTIONS TO BUILD RESPECT FOR IP – THE BUILDING BLOCKS

3. The broad spectrum of measures set out in the preparatory documents<sup>1</sup> of the ACE, in particular its ninth session, reflects the integrated and multipronged approach adopted by Member States and other stakeholders, which embrace developments in legislation, awareness and cultural change, business and technology solutions, and institutional collaboration. These responses, buttressed by empirical research and evidence to better understand the socio-economic reasons for IP infringements and the social, economic and commercial impact of IP infringements on societies,<sup>2</sup> are adopted in light of national IP strategic needs and they evolve to the changing environment. These responses that build upon ongoing enforcement measures include the following.

4. *Public awareness and education* IP protection and enforcement must be viewed from the perspective of the users of the IP system, the consumers and the society. The Committee, with its mandate specifically including “public education”, has placed great importance on IP education and awareness<sup>3</sup> for the general public including youth, to foster a culture respectful of IP, and Member States are playing active roles in this regard.<sup>4</sup> Section III below provides information on WIPO’s activities in awareness-raising to build respect for IP, undertaken by Member State request.

5. *Business solutions* The industry is responding to IP infringing goods and services with evolving business models and licensing modalities that better address the needs of the consumers. In the culture industry, consumers are shifting toward legal offerings, where such offerings are readily available at the right price.<sup>5</sup> Government efforts are often engaged to communicate and promote access to such legal offerings, for example through a dedicated web page pooling links to legitimate products and services.<sup>6</sup>

6. *Technology solutions* With constantly advancing technology, more effective technological tools are being placed on the market to check the legitimacy of an IP-based good or service. While the industry plays the principal role in developing such solutions, governments facilitate the dialogue across industry interests and keep the consumers informed of available tools.

7. *Supply chain security* The global IP product supply chains, involving businesses, organizations, people, technology, activities, information and other resources to move a raw material to the end IP-based product desired by the customer, present a growing risk for counterfeit and pirated goods, but also present an opportunity to strengthen governance and develop trusted networks to better protect IP. Businesses, supported by governments, are responding by developing best-practices to manage and track their upstream and downstream transactions more efficiently, while respecting the different challenges faced by entities located at different positions along the supply chain.<sup>7</sup>

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<sup>1</sup> See the [preparatory documents](#) of the ninth session of the ACE, in particular WIPO/ACE/9/12 through WIPO/ACE/9/26.

<sup>2</sup> The work program of the [sixth](#), [seventh](#) and [eighth](#) sessions of the ACE included “Identification of different types of infractions and motivations for IP right infringements, taking into account social, economic and technological variables and different levels of development,” and “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.”

<sup>3</sup> The [third](#) session of the ACE was devoted to “Education and awareness-raising.”

<sup>4</sup> See in particular [WIPO/ACE/9/12](#) through [WIPO/ACE/9/18](#) and the related exhibition organized during the ninth session of the ACE.

<sup>5</sup> See in particular [WIPO/ACE/9/19](#). The work program of the fifth session of the ACE was “Contribution of, and cost to, right holders in enforcement taking into account [Recommendation 45](#) of the Development Agenda.”

<sup>6</sup> See in particular [WIPO/ACE/9/13](#), [WIPO/ACE/9/14](#), [WIPO/ACE/9/17](#) and [WIPO/ACE/9/19](#).

<sup>7</sup> See in particular [WIPO/ACE/9/20](#).

8. *Voluntary, self-regulation mechanisms* Legitimate businesses are partnering to curb illegitimate activities. In the online environment, in particular, some with and some without government participation, rights holders and online platforms are jointly establishing codes of practice to raise awareness on the harm of IP infringing activities and to develop measures to halt IP-infringing activities in the concerned spaces.<sup>8</sup>

9. *Cooperation and Coordination* The importance of an open, transparent, and effective collaboration and cooperation in the field of building respect for IP cannot be overstated, as reflected in all the measures mentioned above. All actors, including governments, industry, consumers, bolster each other's efforts toward shared interests, at the national and international level. The Committee has emphasized the importance of such close engagement with all the beneficiaries of the IP system.<sup>9</sup>

10. The breadth of measures undertaken by the Member States, the industry and the civil society, ranging from new legislation and prosecution efforts to all of the above complementary actions resonate in particular on the internet where acute challenges to IP compliance and enforcement are being signaled. It is in such online environment that the above complementary and preventive measures to build respect for IP are rapidly taking shape.<sup>10</sup>

### III. WIPO'S ACTIVITIES IN AWARENESS-RAISING TO BUILD RESPECT FOR IP

11. In order to encourage consumer participation to have a shared understanding of the social benefits of IP enforcement and to create an environment respectful of IP, WIPO undertakes activities, upon Member State request, that involve increased IP awareness and education for the general public and in particular the youth. They include capacity building activities which aim to consider public awareness-raising as a preventive measure to complement ongoing enforcement activities, and to provide national authorities and stakeholders with information on how to develop and implement national awareness raising strategies.<sup>11</sup>

12. In this regard, WIPO has developed a modular, step-by-step Building Respect for IP - Awareness Strategy (Strategy). The Strategy, comprising education, collaboration and communication, is applicable either in part or in its entirety, according to the needs of the requesting Member State. The Strategy may be part of a broader National IP Strategy<sup>12</sup> that would encompass strategies to stimulate innovation and creativity, to protect the fruits of such activity through IP and to build a culture that respects IP. The responsibility for the implementation of the Strategy rests with the appropriate government authorities charged with overseeing IP issues in any given country.

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<sup>8</sup> Examples of such collaborations include the European Union Memorandum of Understanding on the sale of Counterfeit Goods over the Internet (see [WIPO/ACE/9/20](#)), the U.S. Center for Copyright Information (see [WIPO/ACE/9/27](#)), and the Best Practices Guidelines for Ad Networks to Address Piracy and Counterfeiting adopted by U.S. companies that offer "Ad Networks."

<sup>9</sup> The mandate of the ACE includes in this regard, in particular, "coordination with certain organizations and the private sector to combat counterfeiting and piracy activities" and "coordination to undertake national and regional training programs for all relevant stakeholders." The work program of the fourth session of the ACE was devoted to "Coordination and cooperation at the international, regional and national levels in the field of enforcement," and that of the fifth session to "Contribution of, and cost to, right holders in enforcement, taking into account Recommendation 45 of the Development Agenda."

<sup>10</sup> See in particular [WIPO/ACE/9/20](#), through [WIPO/ACE/9/24](#) and [WIPO/ACE/9/27](#).

<sup>11</sup> Detailed information (including program, objectives, and participating countries) on WIPO activities undertaken in 2013 in the field of building respect for IP is available in [WIPO/ACE/9/2](#).

<sup>12</sup> See e.g., [WIPO resources on national IP strategies](#), and the related work of the [Regional Bureaus](#) of WIPO.

A. Objectives of the Building Respect for IP - Awareness Strategy

13. The Strategy aims to build respect for IP by promoting improved appreciation of the benefits of the IP system and encouraging a behavioral change to curb demand for IP infringing goods.

B. Key Players

14. The key players with roles in implementing the Strategy generally fall into four categories: public sector, private sector, civil society and the media.

15. *Public Sector* The success of the Strategy is dependent on firm, political commitment of the relevant players in the government, which include:

- IP offices and other IP-specific bodies: National authorities responsible for IP issues are well-placed to take the lead in developing and implementing the Strategy. These may be the IP offices, national IP coordination committees, national councils on IP, etc.
- Other policy makers: It is vital that policy makers throughout the government, notably in the ministries of education, trade and industry, interior, economic planning, science and technology, justice, culture, health, and information, understand the importance of IP as a tool for economic, social and cultural development, and that relevant IP considerations are effectively applied in their respective areas.
- Schools and universities: Teachers and professors need to be involved so that the concepts of IP and IP value are introduced at an early stage, and young people grow up learning to respect IP throughout the education cycle.

16. *Private Sector* The private sector, representing IP rights-holders and active users of IP as business tools, and with direct relationship with consumers play important roles.

- Industry associations: Industry associations, such as chambers of commerce and other business associations, may constitute a starting point for collaboration for awareness-raising. Special interest groups, such as associations of manufacturers of consumer products and pharmaceuticals, or associations grouping representatives of the recording, film and software industries, may provide expertise in dealing with specific IP and industry areas.
- Corporations: Individual corporations, especially with close rapport with consumers, may be identified and recruited as key partners in raising public awareness. These may include both traditional businesses as well as new “digital economy” companies that play a key role in addressing emerging issues in the online environment.

17. *Civil Society*

- Non-governmental organizations (NGOs): Certain types of NGO, such as associations of authors, performers and inventors, scientists, physicians’ groups, may be involved to help pass on specific messages.
- Legal professionals: Bar associations and legal groups specializing in IP law may play an important role in providing legal advice and assistance.
- Consumer associations: The consumers making the ultimate choice between legitimate or illegitimate goods, the active involvement and participation of consumer

associations in the Strategy may provide valuable input on the needs, concerns and challenges of consumers; their involvement would furthermore offer credibility in any public awareness campaign.

18. *The Media* The use of the media is an excellent way of reaching groups of people at all levels of society. Engaging the press – publishing, television and radio – is crucial, as this lends credibility, while providing an excellent tool for mass communicating the Strategy.

### C. Implementation Plan

19. *Assessment and Evaluation* The initial phase in developing the Strategy is to assess the current IP environment in the country, studying in particular the level of consumer perception of IP and awareness of legal and social impact of IP infringing activities. This phase would include an evaluation of the various awareness activities already undertaken at the national level, analyzing the achievements and the related challenges. Consumer surveys, focus group meetings, and questionnaires to key players may be used during this phase.

20. *Defining the Goals* Once the environment in the context of respect for IP has been assessed and evaluated, the goals of the Strategy should be defined. In this regard, it is important to identify the specific behavior that the Strategy would seek to modify (e.g., reduce illegal movie downloads). While education may eventually play a role in changing the target audience's behavior, education itself may not be the final aim in itself.

21. *Defining the Target Groups* The key target groups identified by several WIPO Member States which have embarked on developing Building Respect for IP – Awareness Strategies include policy makers, general public, youth groups, law enforcement officials, academic institutions and R&D centers, the private sector, and the media. The target groups and the key players often have shared and mutually dependent roles, as active engagement by individual and collective stakeholders is critical to the success of any awareness-raising effort.

22. *Defining the Duration* The duration of the Strategy should be determined, broken down into phases with defined goals, target groups and activities.

23. *Proposed Objectives and Activities* There are a variety of awareness-raising activities on building respect for IP, that may be developed and adapted in light of the targeted objectives.<sup>13</sup> The message for each activity may vary and include: contribution of IP to society, relevance of IP culture to our daily lives, importance of IP-legitimate market with information on legal offerings, the harm of IP infringing goods to individuals (local creators, innovators and consumers) and to society in general.

24. The activities may include:

- Exhibitions and information stands in shopping malls, commercial fairs and other public areas;
- Advertisement campaigns by using public information displays on public transportation and billboards;
- Radio and TV shows;
- Goodwill ambassadors such as well-known singers, performers, scientists, participating as national IP spokespersons;
- Newspaper articles, short video spots on national TV and social media, promoting success stories of local creators and innovators on a regular basis;
- Targeted awareness-raising during national “days”, carnivals and festivals;

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<sup>13</sup> See e.g., [WIPO outreach tools](#).

- Dedicated webpage, providing information and FAQs on building respect for IP on the website of IP offices and other relevant bodies;
- Social media accounts set up by the IP offices to interact on respect for IP-related issues with the public at large and in particular with youth groups;
- Development of interactive mobile applications (“apps”);
- Promotional materials carrying the key messages of the Strategy (e.g., leaflets, flyers, rubber bracelets, T-shirts, calendars, etc.);
- Events during the annual celebrations of World IP Day;
- IP Award competitions.

25. *Adaptations by Target Group* The activities may in many ways overlap as undertaken by different target groups, which is unavoidable given the variety and often the shared interests of those involved in IP activities. This can be seen as an advantage in developing a broad strategy on Building Respect for IP – Awareness as the strength of such a program lies in identifying and capitalizing on the synergy among the various groups.

26. The above activities may also be adapted for specific target groups. For example,

(a) Policy makers such as ministers, permanent secretaries and deputies frequently determine the political and financial support for the Strategy. Their understanding and appreciation of the value of the Strategy may provide an important, positive impact on its adoption and implementation. The activities adapted for this group may include focused high-level briefings and consultations, both at the national and international level, with a view to increased understanding of IP-related matters, greater appreciation of the contribution of IP protection and enforcement in the context of a national development policy, and improved strategic coordination and cooperation, including through public/private partnerships. These activities would often result in firm political support towards the long-term objectives of the Strategy.

(b) Youth Groups (primary and secondary school children) generate future generations of innovators, creators, consumers and policy makers. Furthermore, youth groups significantly impact on the consumption decision in the family. Raising their awareness on IP at an early age may help foster an environment respectful of IP for all generations. The adaptations for this group may include: development of IP educational materials such as comic books, animated cartoons, and interactive games; collaboration with the Ministry of Education to introduce building respect for IP into school curriculum as appropriate, or the launch of competitions on building respect for IP in schools; activities during youth science fairs and summer camps; presentations by local creators, innovators and IPO officials in schools; and media pieces on young innovators and creators. For this group, in particular, use of social media, managed by the IP office, may be effective to provide information on IP and to closely interact with young people on the inventiveness and creativity of their peers around the world and the importance of a culture respectful of IP.

(c) Law enforcement officials, such as customs officers, police, prosecutors and magistrates, are important stakeholders in any Strategy aiming to build respect for IP. The customs office plays an active role in awareness-raising by displaying anti-counterfeiting posters at the borders, and the police and the market surveillance in developing and least developed countries regularly engage in educating actors in informal economies and small businesses prior to engaging in IP prosecution. The adapted activities for this target group may principally include capacity building, through training workshops and manuals, on: impact of IP protection and enforcement in the context of social and economic development; minimum standards and flexibilities contained in Part III of the TRIPS Agreement and in national IP legislations; public interest in addressing IP crime; improved and increased rate of detection of and conviction on IP crimes; the benefit of

enhanced cost- and time-effective legal processes; and equitable disposal of IP-infringing goods. Such training may involve rights-holders and consumer associations as relevant.

(d) Universities and R&D centers are potential owners and users of IP rights. The proposed activities raise awareness to students, researchers and lecturers may include: development of internal IP policies for universities and R&D centers; introduce basic IP concepts into the general curriculum; propose agreements with rights holders to curb the misuse of reprographic rights.

(e) Small and medium-sized enterprises (SMEs) and individual creators and innovators are the driving force behind many economies. The activities adapted for this group could include: collaboration with chambers of commerce, manufacturing associations, industry groups and other stakeholders and associations to provide a coordinated approach addressing the needs of SMEs, creators and innovators in building respect for IP; raising awareness of innovators and creators on the value of their IP-related work not only as a source of funding but also to the society as a whole; preparation of statistics and case studies on IP enforcement of particular concern to SMEs.

(f) The media is a valuable partner to communicate respect for IP to the public, and establishing a solid partnership with key media contacts may prove essential to the success of the Strategy. The adapted activities to ensure that the media partners understand the relevance of the Strategy to the public interest, may include: targeted IP training for journalists; regular press conferences organized by the IPO to update journalists on IP-related issues, with press kits containing relevant, ready-to-use information on IP; regular press briefings on new campaigns launched in the framework of the Strategy; launch of an annual award for the best journalistic coverage of IP issues, to be presented by a senior government official.

27. *Assessment and Evaluation* Each activity will need to be monitored and, upon completion, assessed for receptiveness by the target group (covering *inter alia* knowledge of the awareness of activity and any impact leading to changed behavior), successes and lessons learned, and evaluated against the initial objective and specific goal. Such a review is critical as the Strategy develops into multi-annual projects feeding into national IP strategies and wider development strategies. The proposed Strategy relies heavily on the role of the IP offices in its development, adoption and implementation. It will require coordinated efforts from all the ministries, private sector institutions and associations concerned.

28. Experience has shown that enforcement alone has not been sufficient to resolve the problem of counterfeiting and piracy. Awareness, then, could be a key element in the matrix of preventive measures to address the problem, by increasing the appreciation by the public on the benefits of the IP system and the multi-faceted implications of the illegal trade in counterfeit and pirated goods. To achieve this end, the Building Respect for IP – Awareness Strategy will aim to inform, educate and, where appropriate, provide alternatives with the support of the private sector and civil society as set out in Section II above. This Strategy is intended to be an initial framework to facilitate Member States' reflection on developing related IP strategies, to be customized according to the needs of the Member States, commensurate with the country's existing development policies and objectives.

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