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EXPERIENCE OF TRINIDAD AND TOBAGO: NATIONAL PROJECT ON BUILDING RESPECT FOR INTELLECTUAL PROPERTY

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I. PAST EXPERIENCE WITH ENFORCEMENT OUTREACH

1. As with many countries, the development of all aspects of a national intellectual property (IP) system has always been a challenge. The development path taken by Trinidad and Tobago when modernizing its IP system and establishing the Trinidad and Tobago Intellectual Property Office (IPO) involved the simultaneous upgrade of a number of facets. These were mainly administrative, legislative, information technology and training. The statutory responsibilities of the modern IP Office included granting intellectual property rights, the provision of patent information services and promotion of inventiveness among the citizens of Trinidad and Tobago. Other changes made the IPO responsible for substantive examination and grant of industrial property rights for trademarks, patents, industrial designs, geographical indications, integrated circuits and new plant varieties. Even though copyright and related rights arise automatically, the IPO gets involved in many copyright issues as directed by the responsible Minister and when guidance is sought by users of the IP systems and rights holders.

* The views expressed in this document are those of the author and not necessarily those of the Secretariat or of the Member States of WIPO.

2. As it is charged with granting industrial property rights, the IPO cannot get involved directly in enforcement processes. However, the IPO has, over the years, facilitated several enforcement training activities targeting the authorities charged with the IP enforcement chain such as the Police, Customs and Excise, the Director of Public Prosecution and the Judiciary. Enforcement activities have frequently been directed toward copyright piracy as this was the most obvious and blatant of the visible IP crimes. Training was often facilitated by the World Intellectual Property Organization (WIPO) which sometimes partnered with other entities such as the United States Customs and Border Protection. These training exercises had tangible effects particularly in the short term after the activity. However, for subsequent additional, advanced or follow up training sessions, different officers were in attendance and therefore the knowledge gain was not cumulative. Also, most enforcement agencies did not have specialized units dealing only with IP enforcement where expertise could be accumulated and concentrated to develop subject matter specialists.

3. Additionally, the process of laying charges and preparing evidence for the courts was considerably tedious as charges had to be written for each infringing article even if it was duplicated several times. If the rights holder was a foreign artist or movie studio with no local representative, often there would be no representative to indicate that permission was not granted to the accused to make copies of the infringing works. The case could then be thrown out. After a successful conviction, sometimes the sentencing itself was not sufficiently palpable to discourage recidivism. This presented a further discouragement to enforcement agents to enforce IP rights. Subsequent amendments to the Copyright Act, 1997 made provision for sampling when laying charges and authorized representatives who could appear in court matters.

4. In spite of such hurdles, there was a period of regular enforcement activity against street piracy initiated at the level of a Deputy Commissioner of Police. His expertise was often used by WIPO in organizing enforcement activities in Trinidad and Tobago. Unfortunately, the effort was not sustained after his retirement.

5. As IP often safeguards the economic interests of rights holders, the willful infringement of IP rights is frequently seen as an economic crime and sometimes not a serious enough crime to engage the attention and resources of enforcement agencies with limited resources and courts. The belief is no one is physically harmed by piracy.

6. Over the years, enforcement training explored adjacent areas to what seems like simple street piracy. Experts in tax evasion and money laundering provided options bearing in mind the largely unregulated and untaxed informal underground economy that supports street piracy. The experience shared by some was to enhance the removal of street piracy by enforcing other laws they may transgress such as illegal street vending, tax laws and money laundering provisions as there seems to be a significant link between street piracy, money laundering and organized crime. This demonstrated that street piracy was not completely harmless and may have directly or indirectly been used to support more nefarious crimes and to finance serious criminal activity. Again, efforts were not sustained in the long term and the knowledge was dispersed as officers were assigned other non-IP tasks.

7. Rights holders and their representative organizations have also waged campaigns especially in the area of software piracy. The Business Software Alliance (BSA) represented many major business and productivity software firms and was very active in Trinidad and Tobago soon after the new package of IP legislation came into force on December 1, 1997. Their approach was to first educate the corporate community in particular about IP and where their software acquisition and installation practices strayed into infringement. Business entities, including institutions, and the Government, were encouraged to regularize their respective situations where unlicensed software was widely installed. Companies were offered favorable licensing terms and enterprise-wide licenses to become compliant with the law. It was easily

pointed out to them that they were in breach of the Copyright Act, 1997 and what remedies and fines were facing them. Activities extended to retailers, assemblers of personal computers and importers of brand name computers to have licensed software installed on them prior to sale and to provide customers with legitimate media with the licensed software for subsequent reinstallation.

8. The public education and compliance activities continued for about one year and then the BSA began to bring actions against remaining non-compliant businesses and retailers, which resulted in a number of successful convictions and closures of pirate software retailers. What also made this approach quite successful was the fact that the BSA and its members were prepared to appear in court when necessary to support the charges laid against the accused. The present landscape has seen fairly high compliance in the business community and the state. As a licensee, the state is regularly audited by software companies for compliance. Pirated software now exists mainly in private homes as downloads but not in retailed software. Over the years, the IPO has organized several anti-piracy campaigns using various media channels. Some have used live performances with actors performing anti-piracy skits in the street and local artistes who were affected by piracy and pleased to assist in the efforts. Some campaigns were aired on the radio and television and carried in the press. One competition was organized in collaboration with the Ministry of Education and the United States Embassy under the patronage of the US Ambassador at the time. It targeted primary school students at Carnival time in the form of a competition to compose and perform songs about piracy.

9. All of these efforts achieved their immediate objectives and were effective for a while after completion. However, it has been observed that the effectiveness of the message wanes once the materials and media are withdrawn from circulation or when the participants fall out of practice. Additionally, the vagaries of budgeting in public institutions were not consistent and campaigns essentially waxed and waned according to the level of funding made available under recurrent expenditure. The IPO, like many other IP offices, does not retain control of its revenue and has to depend on budgetary allocations from central government. A sustained effort is required for a pro-IP/anti-piracy campaign to be effective. Sustained effort requires an appreciation of IP at the highest levels particularly in centrally driven governments not only in the area of finance but also in public administration as outreach activities rely on specialist staff for successful implementation.

10. The IPO has observed over the years that head-on enforcement alone cannot exterminate piracy. The consumer side of demand must also be addressed. Consumers may need to be convinced by coercion and moral suasion that consuming pirated goods harms industry as a whole and their personal safety. The IPO has long sought to emphasize the entire range of IP and avoid the association of IP only with copyright. It means also having to educate about trade mark infringement and counterfeit beyond consumer goods and extend to medicines, appliances and other patent infringements. During public education and outreach encounters, it has been observed over the years that people who were not previously concerned about the economic effects of their patronage of pirated and counterfeit goods were suddenly converted into pro-IP consumers once they generated their own IP and had economic interests of their own in the support of the IP system and enforcement.

II. TRINIDAD AND TOBAGO BUILDING RESPECT FOR IP CAMPAIGN

11. This project arose as a synthesis of all of those experiences with what does not work, what needs to be done, what is required for long-term implementation, who needs to be convinced and what attitudes need to be adopted by consumers. The end result or what is ultimately desired is an IP-savvy society thriving within a knowledge-intensive economy. This entails building respect for IP. Enforcement should be a last sanction, as occurs in other areas of society. Most people respect physical property and only a small minority need to have the

law enforced against them. This is not translated into the appreciation of intangible property or intellectual property where the proportions are reversed for IP.

12. In order to sustain the outreach effort, the IPO tapped into funds available outside of recurrent expenditure under what is known as the Public Sector Investment Programme (PSIP). PSIP projects are funded as finite projects or as projects that may become part of the regular work of the IPO and then fall under recurrent expenditure. Toward that end, the IPO collaborated extensively with the Building Respect for Intellectual Property Division at WIPO in formulating this project. The IPO believed that enforcement would not be the first approach and that a campaign of this nature should lead off with increasing the levels of understanding and appreciation of IP as an economic tool and a safeguard for knowledge industries.

III. THE PROJECT IN DETAIL

END GOAL:

1. To improve the local market conditions for creative goods and services by reducing the levels of piracy and counterfeit practices; and
2. To build an intellectual property savvy society by increasing the society's level of appreciation and value of IP, IP rights (IPRs) and the IP system.

PURPOSE:

To provide education, information and training in IP to the stakeholders of the IP system. The program targets seven groups. They are:

1. Policy makers;
2. The general public;
3. Youth groups (elementary, intermediate and secondary schools);
4. Law enforcement officials;
5. Academic institutions and R&D centers;
6. The private sector (with emphasis on SMEs and Creators); and
7. The media.

OBJECTIVES:

1. Policy makers: To raise awareness on the benefits of IP in the context of sustainable socio-economic development.
2. The general public: To raise awareness and promote respect for and value of IPRs.
3. Youth groups (elementary, intermediate and secondary schools): To foster a future generation of innovators and creators.
4. Law enforcement officials: To raise the awareness of law enforcement officials on the importance of IPR in the context of socio-economic development, improve and increase certainty of detection and conviction of IP crimes and enhance cost and time-effective legal process.

5. Academic institutions and R&D centers: To raise IP awareness and promote the benefits of the use of the IP system to lecturers, students and researchers.
6. The private sector (with emphasis on SMEs and Creators): To encourage the understanding and use of the IP system and its contribution to national economic growth.
7. The media: To enable the media to play a major role in this strategy, it is crucial that they understand the relevance of the project to the country.

PROBLEMS AND OPPORTUNITIES:

- At this time, education, information and training services in IP, IPR and the IP system is being provided by the IPO only. In pursuing policies that would allow participation in the knowledge-based economy, it is vital to involve universities and other training institutions in industries and the schools that provide IP education, information and training in their teaching programs.
- Government has targeted the Creative Industries for development. The IP system is strategic to its success. Lack of understanding of the value and importance of IP to the growth and development of business, competitiveness and technology transfer affects the development momentum. There is also the view that many valuable IPRs are left idle and not exploited or allowed to be pirated by others without appropriation of benefits or recognition to the creators. Piracy creates a disincentive to creators and innovators to continue to create. The levels and increasing trend of piracy of music, video and other copyrighted material in Trinidad and Tobago is significant and warrants attention. Piracy exists in established businesses. Many creators especially those in the Carnival industries are concerned by this trend. They fear that the continuation of the illegal practice of piracy may result in the demise of the industry. Several committees of the IPO established to review the IP issues have recommended that the problem be addressed and have recommended that the IPO pursue education, information and training activities to provide solutions.
- Policing for IP crimes and enforcement of IPRs is negligible or almost non-existent. In addition, many believe that the law alone will not solve the problem and that there is the need to develop amongst the society a sense of moral value for IP from which proper behavior will emerge.
- The IPO has the statutory responsibility to provide patent information services, promote inventiveness and by extension to provide IP education information and training in Trinidad and Tobago. The IPO has in the past mounted anti-piracy campaigns, education, information and training programs but not at the level and on sustained basis required to achieve the desired results.
- The creative industries stakeholders are calling on the IPO to address the situation of IP piracy, management and commercialization/monetization of IP.

The IPO engaged with three consultants from WIPO through its technical assistance program to developing countries to assist the IPO in developing a Public Education and Awareness strategy for the short term (Year 1) and an Education, Information and Training strategy for the medium term (Year 2 and Year 3) to address the problems.

IV. SCOPE OF THE PROGRAM

13. The program is national in scope and targets several groups: policy makers, the general public, youth groups (elementary, intermediate and secondary schools), law enforcement officials, academic institutions and R&D centres, the private sector (with emphasis on SMEs and creators) and the media. The program will provide Education, Information and Training (EIT) to a wide cross-section of the population aimed at creating awareness and understanding of IP, IPRs and the IP System through education, information and training in the production, commercialization and proper use of IP, IPRs and the IP system. The duration of the program is a period of three years. It involves inputs from WIPO through its technical assistance programs.

V. THE OUTPUTS OF THE PROGRAM

14. The outputs of the program are as follows:

1. Roving exhibition prototype complete with exhibits in all areas of IP and exhibits from successful creators/inventors, signage and display supports for exhibits and advertisements and information for visitors. This prototype is to be used in outreach activities to raise awareness of the value and importance of IP, IPR, the IP system and the harmful effects of copyright piracy and trademark counterfeiting.
2. Collections of information resource materials in both digital and print formats designed to raise the level of awareness and understanding of IP for the following targeted groups:
 - a) Primary schools: coloring books, comic books, games with lessons in IP, IPR and the IP system;
 - b) Secondary schools: interactive software application for lap-top computers, comic books, brochures and booklets;
 - c) University students: booklets/brochures on the several forms of IP, IPR; the IP system; and
 - d) General public: flyers, leaflets, brochures on all forms of IP, IPR and information of the IP system.
3. Compilations of education, information and training materials; brochures/flyers/leaflets/booklets to deal with the IP issues being experienced by SME, Police and Customs Officials and made available on the IPO web site and at the Office.
4. Compilations of IP literature to support the teaching of IP in the primary, secondary schools and in the universities and other tertiary institutions: Law school, Public Service, Police and Customs Division academies. These compilations are to be available on the IPO website and at the Office.
5. A roving IP Clinic for creators/inventors, business especially SMEs, incubators and R&D institutions, with tools to collect and record data, analyze the data to determine their "IP health" and report/advise on corrective measures.
6. The provision of introductory courses in IP for the Public, Public Servants, Managers, SMEs, Police and Customs Officials, University Students, Teachers/lecturers and administered by the IPO etc.

7. A strengthened institutional capability at the IPO to administer Awareness, Education, Information and Training programs comprising of the following resources:

- a) An on-line digital library of information resources on the IPO's website, and capability in the IPO to use and manage new-media: Twitter, YouTube and Facebook as media/channels to store and broadcast/distribute and communicate IP related information resources to stakeholders and the public.
- b) A technical library function at the IPO with the human resources to manage the collections mentioned above;
- c) Strengthened capability in the IPO to design and administer basic training programs in IP and to arrange for the provision of experts through technical assistance from WIPO and other IP bodies to assist other local institutions: universities, schools *etc.* to design and administer education, information and training programs in IP;
- d) Capability in the IPO to record using audio-video digital equipment, edit, reproduce and display audio-video materials and to reproduce CDs, DVDs and other digital information products for distribution and broadcast to the public and stakeholders;
- e) Active participation in the network of Global Intellectual Property Academies to source information and new technologies to improve efficiency and effectiveness in the IPO administration of Awareness, Education, Information and Training programs.

VI. EXPECTED BENEFITS AND OUTCOMES

- An informed society and institutions with greater appreciation and understanding of IP and IP issues;
- An improvement of the local market conditions for creative works with reduced levels of piracy and counterfeit goods and services. This will provide a form of incentive to creators/innovators to further create;
- An increase in the population of creators/inventors, as well as in the volume and variety of creative products and services entering the market;
- Further growth and development of the local creative industries, R&D institutions;
- A greater appreciation of the need for policy regarding:
 - policing and enforcement of IP crimes; and
 - IP education in the schools and universities.

VII. CONCLUSION

15. The project is expected to achieve its goals and objectives. It is also expected to complement and enhance the outcomes of other Government initiatives and policies such as the IP Strategy, the Study to Quantify the Contribution of Copyright Industries to the GDP, the National Intellectual Property Policy and the National Innovation Policy. Trinidad and Tobago is mindful of the trend toward a knowledge-based economy and believes this is the type of preparation needed for the administrators, users and consumers of the IP system.

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