



Counterfeiting and Piracy in the Framework of Strategic Goal VI of WIPO

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on IP Enforcement
for Judges
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1. Introduction

- Infringements to IP, Counterfeiting & Piracy
- Building Respect for IP: The Policy Framework
- Advisory Committee on Enforcement
- Building Respect for IP Division
 - International Cooperation
 - Legislative & Technical Assistance

2. Counterfeiting & Piracy

Examples of common affected products

<i>Industry/Sector</i>	<i>Examples of products affected by counterfeiting and piracy</i>
Audio-visual, literary and related copyright work	Music, films, software, computer/video games
Pharmaceuticals	Medicines used for treating cancer, HIV, malaria, diabetes, cholesterol, cardiovascular diseases, antibiotics
Automotive	Engine parts, tires, disc brake pads, oil, filters, engine components, belts, brake fluid
Food, drink, toiletry and other household products	Conserved vegetables, milk powder, baby food, instant coffee, drinks. Shampoos, detergents, toothpaste.

Source: OECD, the Economic Impact of Counterfeiting and Piracy

2. Counterfeiting & Piracy

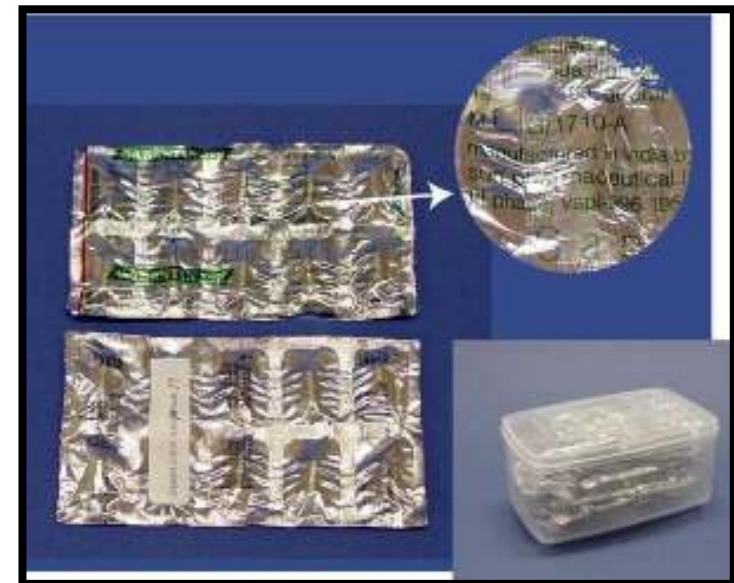
- Impact for Right Holders:
 - Unfair competition.
 - Negative impact on brand value and reputation.
 - Negative impact on sales (market shares), royalties and licensing.

2. Counterfeiting & Piracy

- Impact for Consumers:
 - Serious threats to health and safety.
 - Misleading (origin of the product, quality, etc.).

2. Counterfeiting & Piracy

■ Health:



2. Counterfeiting & Piracy

■ Safety:



2. Counterfeiting & Piracy

- Impact for public authorities:
 - Negative impact on innovation & creativity.
 - Discouraging international trade and foreign direct investments (FDI) – impact on transfer of technologies.

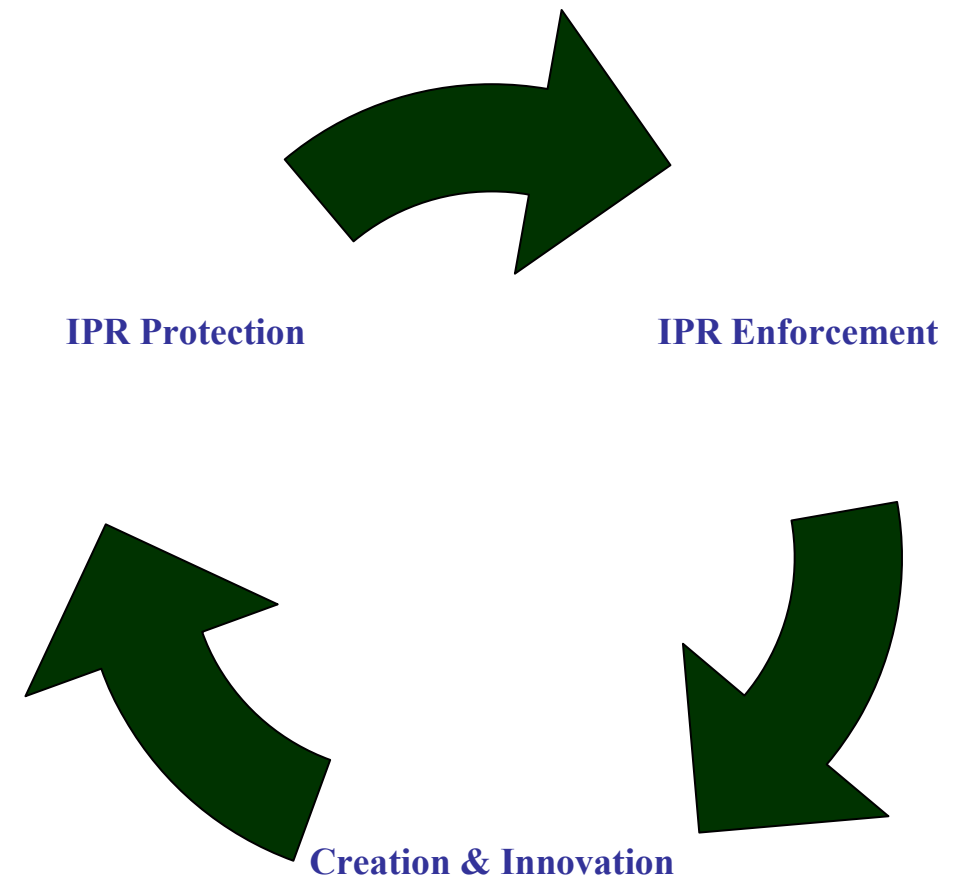
- Undermining employments.

- Losses of revenue (taxes).

- Could strengthen criminal networks.

2. Counterfeiting & Piracy

Ensuring effectiveness to IPRs



2. Counterfeiting & Piracy

IP Enforcement

- At international level: TRIPS, Part III (*“Enforcement of IPRs”*)
 - Civil and administrative procedures & remedies;
 - Provisional measures;
 - Border measures;
 - Criminal procedures.

- At EU level:
 - Regulation (EC) No. 1383/2003 concerning customs action against goods suspected of infringing IP rights;
 - Directive 2004/48/EC on the enforcement of IP rights.

2. Counterfeiting & Piracy

- TRIPS, Art. 69: International Co-operation between Member States.
- TRIPS, Art. 7: « *The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and dissemination of technology, to the mutual advantage of producers and users of technological knowledge in a manner conducive to social and economic welfare, and to a balance of rights and obligations* ».

2. Counterfeiting & Piracy

International Cooperation

- World Trade Organization
- World Customs Organization
- Universal Postal Union : amendment to Art. 15 of the Universal Postal Convention – insertion of counterfeit & pirated goods in list of prohibited items (entry into force: 01/01/2010) – cooperation with customs authorities.
- World Health Organization (Substandard/Spurious/Falsely-Labelled/Falsified/Counterfeit Medical Products)
- Interpol
- ... **and WIPO**

3. The Policy Framework

- Preliminary remarks:
 - WIPO and IP Enforcement : WIPO is not a supranational operational agency in the field of IP enforcement
 - IP enforcement in a broader perspective: How to ensure a sustainable environment where building respect for IP is ensured?

3. The Policy Framework

- **Strategic Goal VI:** International Cooperation on Building Respect for IP
 - What is meant by “Building Respect for IP”?
 - Broader approach than IP Enforcement
 - Aims at the creation of an enabling environment that promotes respect for IP in a sustainable manner in a balanced way between the right holders, the consumers and the social and economic development

3. The Policy Framework

- **Strategic Goal VI:** International Cooperation on Building Respect for IP

- **Driver:** Recommendation 45 of the Development Agenda

*“To approach intellectual property enforcement in the context of broader societal interests and especially development-oriented concerns, with a view that *“the protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations”*, in accordance with Article 7 of the TRIPS Agreement.”*

3. The Policy Framework

■ **Strategic Goal VI:** International Cooperation on Building Respect for IP

■ Objectives :

- Further progress in the international policy dialogue among WIPO Member States ;
- Cooperation and coordination between WIPO and other international organizations ;
- Enhanced capacity at the national level to develop and give effect to IP enforcement policies and measures, taking into account socio-economic and development-oriented concerns.

3. The Policy Framework

- **Strategic Goal VI:** International Cooperation on Building Respect for IP
 - Implementation?
 - In accordance with the mandate of the Advisory Committee on Enforcement (ACE) ...
 - ... by the WIPO Secretariat (through the Building Respect for IP Division).

4. Advisory Committee on Enforcement

- Established in 2002
- All WIPO Member States + accredited observers
- “advisory” => no norm-setting!
- Mandate: (i) coordination with certain organizations and the private sector to combat counterfeiting and piracy; (ii) public education; (iii) assistance; (iv) coordination of national and regional training; (v) exchange of information.
- Annual work program agreed by the ACE
- Discussion supported by studies – Thematic approach
- Working documents/studies available at:
<http://www.wipo.int/enforcement/en/ace>

4. Advisory Committee on Enforcement

- 1st Session: 2003
- 2nd Session: 2004 - the role of the judiciary and the prosecution in enforcement activities
- 3rd Session: 2006 - education and awareness-building, including training
- 4th Session: 2007 - cooperation and coordination at the different levels – focus on criminal enforcement
- 5th Session: 2009 - contribution of, and costs to, right holders in enforcement of IPRs

4. Advisory Committee on Enforcement

- 6th (2010) and 7th (2011) Sessions:
 - A literature review of methodologies and gaps in the existing studies;
 - Identification of different types of infractions and motivations for IPR infringements, taking into account social, economic and technological variables and different levels of development;
 - 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;
 - Analysis of various efforts, alternate models and other possible options from a socio-economic welfare perspective to address the counterfeiting and piracy challenges.

5. Building Respect for IP Division

- Secretariat to the ACE
- Information tools: Casebooks, newsletters, ...
- Cooperation with other international organizations (WTO, WCO, etc.); private right holders (enhancing public-private cooperation); NGOs.
- Assistance to the Member States

5.1. International Cooperation

- Cooperation with other international organizations (WTO, WCO, etc.) and private rightholders

- Including: Global Congress on Combating Counterfeiting & Piracy



5.1. International Cooperation



- Public-private partnership: WIPO, Interpol, WCO and the private sector (ICC-BASCAP, INTA)
- 6th Congress: chaired by WIPO, hosted by INPI (Paris, February 2011)
- Attracted almost 900 delegates from 105 countries
- Focus in 2011 on finding sustainable solutions in response to different levels of socio-economic development
- Examples:
 - Measuring scope and impact of counterfeiting and piracy;
 - Protecting consumer safety;
 - Counterfeiting and piracy in the virtual world;
 - Innovative approaches to financing effective enforcement;
 - Corporate Social Responsibility – nurturing respect for IP
- Key statements; podcasts of the sessions and other information available at <http://www.ccapcongress.net/>

5.2. Legislative & Technical Assistance

- Only on request from the WIPO Member States - Important demand by WIPO Member States

- WIPO services include:
 - Legal assistance: updated legal frameworks to comply with the international standards on IP enforcement.
 - Assistance to adopt enforcement strategies.
 - Capacity-building activities: judiciary, law enforcement agents.
 - Awareness-raising activities.

6. Conclusion

- Effectively addressing counterfeiting & piracy is an essential policy issue :

“Well-functioning IP enforcement mechanisms are the best means to limit the number of violations of IP rights and to ensure that right holders and the society as a whole can reap the benefits from the IP system.”

THANK YOU FOR YOUR ATTENTION!



www.wipo.int/enforcement/en/