

**WIPO/ACE/9/29 PROV.
ORIGINAL: ENGLISH
DATE: MARCH 5, 2014**

Advisory Committee on Enforcement

Ninth Session

Geneva, March 3 to 5, 2014

DRAFT SUMMARY BY THE CHAIR

Document prepared by the Secretariat

1. The ninth session of the Advisory Committee on Enforcement (ACE) was held from March 3 to 5, 2014. The session was attended by 72 Member States and 18 Observers.
2. Mr. Francis Gurry, Director General of WIPO, welcomed the Committee and thanked all the Member States for their close engagement. He noted the exhibition being organized for the first time as part of the Committee, as another sign of the seriousness with which the Member States view the particular area of building respect for intellectual property (IP). The Director General introduced the work program items of the ninth session, namely, "Practices and operation of alternative dispute resolution (ADR) systems in IP areas" and "Preventive actions, measures or successful experiences to complement ongoing enforcement measures with a view to reducing the size of the market for pirated or counterfeited goods". He noted the role ADR can play in building respect for IP and in enforcement of IP, as court agendas get fuller, in particular bearing in mind that ADR provides access to specialist expertise. In relation to the item on preventive actions to complement operational enforcement, he noted that prevention is better than cure, acknowledging the various practices of Member States to be presented. Finally, the Director General emphasized the importance of the deliberations on the future work program of the Advisory Committee on Enforcement, recognizing that the Committee has evolved into a very rich forum for exchange and discussion in respect of building respect for IP and enforcement.
3. Under Agenda Item 2, Ambassador Thomas Fitschen, Deputy Permanent Representative, Permanent Mission of Germany, was elected as Chair; and Ms. Ekaterine Egutia, Deputy Chair of National Intellectual Property Center (SAKPATENTI) of Georgia, and Mr. Wojciech Piatkowski, First Counsellor, Permanent Mission of Poland were elected as Vice-Chairs. The Delegation of Kenya, on behalf of the African Group, agreed to the nomination of the Chair, but recalled the

Group B (to check) having expressed a preference for Chairs of technical committees coming from the capital.

4. The Chair thanked delegations for his election and recalled the mandate of the ACE as agreed by the WIPO General Assembly in 2002. The purpose of the ACE was not to set norms, but to exchange information on enforcement, including issues of coordination and technical assistance in the field of enforcement, as well as coordination with other organizations and the private sector to combat counterfeiting and piracy. The Committee had to look at public education, and to strive for more coordination in the field of training programs for all relevant stakeholders. When approaching enforcement issues, broader societal interests and development-oriented concerns were to be taken into account, as specified in Recommendation 45 of the WIPO Development Agenda. The Committee was also supposed to work towards WIPO Strategic Goal VI, which cut across the entire spectrum of WIPO's work, and in which all countries, whether developed or developing, had a common interest. As state parties to the WIPO Convention and the various IP treaties, Member States had to strive for building respect for IP, and that meant for better compliance with the legal obligations they have signed up to. All States had to consider how they can implement the system of IP protection, in ways that respond to the practical needs of their societies and reflect the realities in the respective countries – this being a process, rather than a one-time event. The Chair emphasized that, as Member States and stakeholder groups endeavor to protect the creative and innovative fabrics of their societies through IP, the Committee could play a significant role in providing a forum to share experiences and lessons learned how to enhance national capacities and to deal with the challenges. The Committee should also be the place for Member States to find ways to support each other and cooperate better, including with other stakeholders, such as the private sector. In view of the rich work program of the ninth session the Chair expressed the hope that the ACE might become a “market place of ideas”, where everyone will find at least one good idea to take home and reflect upon.

5. Under Agenda Item 3, the Committee approved the participation of the Center for Responsible Enterprise And Trade (CREATE.org) as an *ad hoc* observer to the ninth session of the ACE.

6. Under Agenda Item 4, the Committee adopted the Agenda (document WIPO/ACE/9/1) with amendments, as follows. Upon proposal of the Delegation of Egypt, speaking on behalf of the Development Agenda Group, supported by the African Group, it was decided to include a new Agenda Item 9 which reads “Contribution of the ACE to the implementation of the respective Development Agenda recommendations”. As the following items consequently needed to be renumbered, agenda Item 10 now reads “Adoption of the Summary by the Chair”. Agenda Item 11 reads “Closing of the session”.

7. The Delegation of Japan, on behalf of Group B, and the Delegation of the Czech Republic, on behalf of the Group of Central European and Baltic States (CEBS Group), stated that the inclusion of Agenda Item 9 should not constitute a precedent for the future.

8. Under Agenda Item 5, the Committee adopted the Summary by the Chair of the Eighth Session of the ACE (WIPO/ACE/8/12), with the amendment requested by the Delegation of Egypt, on behalf of the Development Agenda Group (DAG), to elaborate on the proposals contained in Paragraph 33 by annexing the full proposals as initially submitted.

9. The Committee heard Opening Statements by Group B, the African Group, the Group of Central Asian, Caucasus and Eastern European Countries (CACEEC Group), the Group of Latin American and Caribbean Countries (GRULAC), the CEBS Group, the United States of America, Chile, the European Union, Brazil, the Development Agenda Group, and the Representative of the Third World Network.

10. The Delegation of Japan, on behalf of the Group B, expressed confidence that this session would contribute to the appropriate enhancement of enforcement practices, an essential element in the implementation of an effective, meaningful system of IP protection. IP enforcement being a topic of common interest irrespective of the level of development of the Member States, the Group looked forward to learning about other experiences with respect to the work program of the ninth session. Group B expressed support for the future work proposal submitted by Poland, United Kingdom and the United States of America on "The Specialization of the Judiciary and IP Courts".

11. The Delegation of Kenya, on behalf of the African Group, recalled that the ACE is a forum of discussion and exchange of information on IP enforcement issues, in particular in relation to technical assistance and cooperation, and recalled Recommendation 45 of the WIPO Development Agenda. The Group called for the Committee to protect public and private interests, with discussions taking into account, with balanced information, the different levels of development and transfer of knowledge.

12. The Delegation of Belarus, speaking on behalf of the CACEEC Group, highlighted the importance the Group attaches to the work of the ACE, which acts as a catalyst for efforts made by Members States in the area. The Group believes that the ACE allows different countries to share best practices. The Group noted the exhibition taking place alongside the Committee as a very innovative step, and noted its readiness to participate constructively in discussing the future work of the ACE.

13. The Delegation of Uruguay, on behalf of GRULAC, emphasized the great importance of the work of the ACE for the region, stressing that the development of a balanced IP system encouraged the economic and social development of their countries. The Group highlighted the importance of the two work programs, one of which originated from a proposal by Peru. The Group expressed its commitment to actively engage in the meeting in dealing with the recent activities of WIPO in the area of building respect for IP and in the future work of the ACE.

14. The Delegation of the Czech Republic, on behalf of the CEBS Group, noted that the importance of the Committee as a forum for exchanging information, experiences and best practices in the field of enforcement, and reiterated the Group's strong commitment to fight counterfeiting and piracy at the national, regional, and international levels. The Group stated that it firmly believed that a better understanding of the enforcement practices of individual countries, such as ADR, preventive measures, the economic and social impact of the IP infringement, can enable Member States to develop and improve their appropriate and effective enforcement mechanisms that form an integral part of any efficient IP system. As regards to the future work, the Group expressed its continued support to the Committee's activities concerning the development of better information and statistics about the scope, scale and impact of counterfeiting and piracy, the improvement of administrative cooperation and information exchange across borders, the improvement of best practices in enforcement, raising public awareness of the growing risks of counterfeit and sub-standard products to health and safety, and the engagement of various stakeholders such as businesses in the enforcement practice. The Group welcomed several of the proposals on the table vis-à-vis the future work, expressing support to the proposal of Group B on awareness building activities and the proposal by Poland, the United Kingdom and the United States of America on "The Specialization of the Judiciary and IP Courts". The Group also recognized the importance of efficient technical assistance in the area of enforcement.

15. The Delegation of the United States of America recognized the importance in reinforcing cooperation among authorities and relevant organizations in the field of enforcement and supported WIPO's efforts to coordinate and enhance the enforcement aspects of its technical assistance work. The Delegation expressed full commitment to work closely with WIPO and

Member States in shared commitment to assist all countries in improving their enforcement of IP rights. As for the future work, the Delegation recalled the proposal it tabled with Poland and the United Kingdom, to study "Specialization of the Judiciary and IP Courts", annexed to WIPO/ACE/9/28.

16. The Delegation of Chile expressed support for the statement made by the Delegation of Uruguay on behalf of GRULAC. The Delegation pointed to the importance of ADR in IP areas, noting that in Chile ADR is widely used in different IP disputes. Since December 1, 2013, Chile has a center for the resolution of domain name disputes with an arbitration system. In relation to preventive measures, the Delegation highlighted the work of its customs authorities which have developed work in the area of collection of customs duties on IP, especially with the entry into force of a Law on border measures in 2003. The Delegation also noted the integral customs duties collection plan developed since 2013, and the experience of the investigation police brigade on IP offenses.

17. The Delegation of the European Union recognized that both EU and national policies concerning IP enforcement have to be outward looking, in an increasingly interconnected global economy. The Delegation affirmed the EU's support to the ACE as a forum allowing interaction with international trading partners to discuss how respective IP enforcement policies can link together more efficiently and effectively.

18. The Delegation of Brazil recalled the guidelines applicable to the work of the ACE, in particular Strategic Goal VI, to promote International Cooperation on Building Respect for IP. It recalled the outcome indicators defined in the Medium Term Strategic Plan for WIPO, 2010 - 2015, particularly, "balanced policy dialogue within the auspices of the ACE, taking into account development-oriented concerns". The Delegation noted that the strategy for societies to increase respect for IP, should include education about all the aspects of the subject, including the existing flexibilities, as well as public measures that are in line with the socio-economic realities of each country. The Delegation noted that WIPO, as a specialized UN agency, had all the credentials and the legitimacy to lead the work towards the achievement of this goal. The Delegation emphasized the role of WIPO in providing broad and balanced technical assistance to the Member States for their enforcement activities, bearing in mind the specificities of each country, as well as the need to align these activities with the Recommendations of the Development Agenda. As for the future work, the Delegation supported the DAG's proposal to promote discussions on how to intensify and improve WIPO's enforcement-related technical assistance.

19. The Delegation of Egypt, on behalf of the DAG, recalled the relevance of the Recommendations of the Development Agenda and Article 7 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).

20. The Delegation of Colombia expressed support for having studies and exchanging information that would help to improve protection of IP. The Delegation welcomed the approach to study corporate social responsibility models, and to involve enterprises. The Delegation noted its support for the future work proposal submitted by Poland, the United Kingdom, and the United States of America on "Specialization of the Judiciary and IP Courts", and expressed interest to share the related national experience of Colombia with the Committee.

21. The Representative of the Third World Network (TWN) stated that it is critical that WIPO's activities in the area of IP enforcement do not affect the enjoyment of human rights to food, health, education and science and culture. The Representative recalled the development oriented approach to intellectual property, reflected in Development Agenda Recommendation 45. The Representative stated that a maximalist approach to IP enforcement hampered the technological catch-up process of developing countries as well as legitimate business, and that developing

countries should be allowed to use the flexibilities effectively and efficiently, and that the ACE should initiate related discussion. The Representative expressed concerns on the promotion of public private partnership in relation to IP enforcement, and the collaborations with agencies that promote maximalist IP enforcement policies. The Representative urged the Secretariat to follow an evidence-based approach in carrying out the activities on IP enforcement, and called for more transparency and accountability in Secretariat activities with regard to IP enforcement.

22. Under Agenda Item 6, the Committee heard 22 expert presentations relating to the various items of the work program (working documents WIPO/ACE/9/3 to WIPO/ACE/9/27). The Committee valued the quality and balanced approaches of the working documents, and the presentations.

23. In relation to the work program item on "Practices and Operation of ADR in IP Areas", Mr. Trevor Cook, Attorney-at-Law commissioned by the Secretariat to prepare the background paper on ADR as a tool for IP enforcement, presented his paper which covers: types of ADR procedures that may be used for IP enforcement; legal and regulatory frameworks for ADR, in the context of IP enforcement; benefits and limitations of ADR as an IP enforcement tool; and the current use of ADR for IP enforcement. This was followed by the Secretariat's presentation of the activities of the WIPO Arbitration and Mediation Center, covering its caseload under the WIPO Mediation, Arbitration, Expedited Arbitration and Expert Determination Rules; and domain name dispute resolution.

24. Discussions followed with interventions from the Delegations of Georgia, Philippines, Brazil, Burkina Faso, Germany, the European Union, Sri Lanka and the Representative of Knowledge Ecology International (KEI).

25. Five presentations on national experiences followed. The Department of Intellectual Property Rights, Ministry of Commerce of Cambodia presented its Preliminary Alternative Dispute Resolution (PADR), and the recommendation service provided in IP cases before the courts; the National Copyrights Institute (INDAUTOR) of Mexico presented the diverse ADR mechanisms offered by the Institute, including administrative settlement procedure, conciliation, mediation and arbitration, indicating that between 1998 and 2013, around 24,386 settlement conferences were convened. The Korean Intellectual Property Office (KIPO) presented the work of the Industrial Property Right Dispute Mediation Committee (IPRDMC) established under KIPO and its plans to invigorate this body. The Deputy Directorate General for Intellectual Property in Spain set out the extra-judicial copyright and related rights dispute resolutions systems in Spain, explaining the applicable powers, composition, practice, and possible options for the future. Professors Barton and Cooper, California Western School of Law, United States of America, presented the report prepared for the United States Patent & Trademark Office, offering descriptions of some of the ADR methods available for domestic or international IP disputes. Finally, Fraunhofer-Gesellschaft from Germany and Ms. Sabine Fehringer, Attorney-at-Law, Austria, shared industry perspective on use of ADR in IP cases particularly in relation to universities and research institutions.

26. Discussions followed with interventions from the Delegations of Germany, Burkina Faso, Japan, Pakistan, Philippines, Indonesia, and the European Union.

27. In relation to work program item on "Preventive actions, measures or successful experiences to complement ongoing enforcement measures with a view to reducing the size of the market for pirated or counterfeited goods", the Secretariat introduced its activities in awareness raising to build respect for IP.

28. Under the sub-item of "Awareness Raising", four national and one regional experiences were shared. The National Registry of Costa Rica presented its national project to "Establish a Culture

of Respect for IP"; the Industrial Property Office of the Slovak Republic presented its pilot project for raising public awareness on IP and its enforcement, entitled "IP Awareness – IP Education – IP Enforcement"; the Intellectual Property Office of Trinidad and Tobago shared its national project on building respect for IP; the Companies and Intellectual Property Commission (CIPC) of South Africa introduced its "Be your Own Buy your Own" (BYO²) anti-piracy campaign; and the Intellectual Property and Competitiveness Department of the League of Arab States shared their efforts to combat piracy, counterfeiting and commercial fraud, showcasing the animated cartoon which displays with humor the importance of IP rights.

29. Discussions followed with interventions from the Delegations of El Salvador, Japan, Jamaica, Kenya, Brazil, the United Kingdom, Ghana, Germany, Sri Lanka, Burkina Faso, Jordan, Indonesia, Nepal and the representatives of KEI and the International Video Federation (IVF).

30. Under the sub-item "New Business Models", the National Institute for the Defense of Competition and Intellectual Property Protection (INDECOPI) of Peru reported on the campaigns of the Copyright Directorate, comprising promotion of legal use of software by small and medium-sized enterprises (SMEs), anti-piracy crusade undertaken with the private audiovisual sector, "Buy Legal, Buy Original" campaign, campaign to reduce illegal use of broadcast signals and audiovisual products and works, and campaign to promote the legal use of music and movies in overland transportation services, and educational projects. Fundacja Legalna Kultura, from Poland, explained the results of a social campaign, "Legal Culture" ("Legalna Kultura" in Polish), aiming to build awareness in the field of protection of intellectual property; the European Observatory on Infringements of Intellectual Property Rights provided a report on the different business models conceived by the industry to offer, through online technologies, various types of copyright content.

31. Discussion followed with interventions from the Delegations of Egypt, Germany, Pakistan, and Chile.

32. Under the sub-item "Supply Chain Security", the European Commission explained its initiatives to incentivize the development of pro-active and inclusive voluntary agreements between stakeholders to prevent the development and spread of commercial scale IP infringing activities, highlighting upstream and downstream "due diligence" initiatives, which include memoranda of understanding between rights holders and distribution and payment service providers, and the diffusion of supply chain auditing, respectively.

33. Discussion followed with interventions from the Delegations of South Africa, the United States of America, and the Representatives of CREATE.org and the International Trademark Association (INTA).

34. Under the sub-item "Preventive Measures in the Online Environment", three national experiences and two industry experiences were shared. The Ministry of Culture of the Russian Federation introduced the procedure under the "Amendments to Certain Legislative Acts of the Russian Federation Concerning the Protection of Intellectual Rights in Information and Telecommunication Networks and the Draft Federal Act on Amendments to Certain Legislative Acts of the Russian Federation in order to Stop Violations of Copyright and Related Rights in the Information and Telecommunication Networks". The Motion Picture Association (MPA) of the United States of America, described the formation and work of two voluntary mechanisms: (i) the Copyright Alert System and its Oversight Body – the Center for Copyright Information in the United States of America and (ii) Operation Creative in the United Kingdom. The Intellectual Property Office of the United Kingdom introduced the efforts made to tackle IP infringement online, including legislative framework, interventions, understanding consumer behavior, industry initiatives, education, and technological challenge. The Deputy Directorate General for Intellectual Property

of Spain explained the administrative and judicial procedure for infringements of copyright and related rights committed by providers of information society services which became operational in March 2012. Alibaba Group of China presented its IP protections practices under the Internet platform-based business model, comprising *inter alia*, online IP protection and complaint system, development of appropriate platform policy, proactive anti-counterfeit measures, working with different partners and taking multiple approaches to IP protection cooperation, offline anti-counterfeit operation at the source, and positive guidance in IP protection, and shared related difficulties and challenges.

35. Discussions followed with interventions from the Delegations of Burkina Faso, South Africa, the United States of America, Germany, Egypt, Spain, the Philippines, and Belgium.

36.