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Advisory Committee on Enforcement

TENTH
Ninth Session
Geneva, November 23 to 25, 2015

DRAFT SUMMARY BY THE CHAIR

Document prepared by the Secretariat

1. The tenth session of the Advisory Committee on Enforcement (ACE) was held from November 23 to 25, 2015. The session was attended by 65 Member States and 18 Observers.

2. Mr. Francis Gurry, Director General of WIPO, welcomed the Committee and thanked the Member States for their close engagement in the work of the Committee and the related activities undertaken by the Secretariat. He noted that this was a demonstration of the enthusiasm on the part of Member States in finding practical approaches to the pervasive question of building respect for intellectual property (IP). The Director General noted that the rich and full program of the tenth session featured 31 experts, coming from all regions of the world, covering two work items. The large number of interventions foreseen illustrated the considerable variety of activities that Member States and other stakeholders were carrying out in order to complement IP enforcement. He also indicated that an exhibition was organized on the side of the tenth ACE session, presenting various activities undertaken by Member States in relation to public communication campaigns on respect for IP and awareness tools for young people, and thanked the eight exhibiting Member States. He announced that the Secretariat would organize a side event on WIPO's capacity-building activities to build respect for IP with Judge L.T.C. Harms, former Deputy President of the Supreme Court of Appeals of South Africa, who would talk about his experience participating as an expert for WIPO in its activities to build respect for IP. Recalling that the Committee would also consider its future work, the Director General encouraged Delegations to provide guidance on topics to be addressed in the future and expressed the hope that the selected topics would continue the tradition of successfully sharing experiences of the Member States.

3. Under Agenda Item 2, Ms. Amanda Lotheringen, Senior Manager, Copyright and IP Enforcement, Companies and IP Commission (CIPC), Ministry of Trade and Industry, South Africa, was elected as Chair; and Mr. Grega Kumer, Senior IP Adviser, Permanent Mission of the United

Kingdom of Great Britain and Northern Ireland to the United Nations Office and other international organizations in Geneva, and Mr. Igor Moldovan, First Secretary, Permanent Mission of Romania to the United Nations Office and other international organizations in Geneva, were elected as Vice-Chairs.

4. The Chair noted that with the globalization of the IP value chain it was now more than ever important for countries to share experiences and lessons learned to enhance national capacities to deal with the challenges, and work towards the goal of creating an enabling environment in which IP could fulfil its role as a force for innovation and creativity. Implementation of IP enforcement was done in the light of the national realities and capacities within Member States, and there would be no one solution. Working together and engaging in increased dialogue, however, will strengthen these capacities. The Chair believed that this was where the value and the need for the ACE lay and hoped that the deliberations would be concluded with an agreement on a balanced work approach for the next session of the ACE in 2016.

5. Under Agenda Item 3, the Committee adopted the Agenda (document WIPO/ACE/10/1).

6. Under Agenda Item 4, the Chair noted that no request for the admission of *ad-hoc* observers had been received.

7. Under Agenda Item 5, the Committee adopted the Summary by the Chair of the Ninth Session of the ACE (WIPO/ACE/9/29).

8. The Committee heard Opening Statements by Group B, the Group of the Central European and Baltic States (CEBS), the Group of Latin American and Caribbean Countries (GRULAC), the African Group, the Asian Group, the Delegation of the European Union (EU) and its Member States, and the Representative of the Third World Network (TWN).

9. The Delegation of Greece, on behalf of Group B, reiterated the importance which it attached to the ACE and its subject, namely, the enforcement of IP. Without effective enforcement mechanisms and their application, IP rights could not be used in a way which could contribute to development through the promotion of innovation. In this regard, enforcement was the subject WIPO had to positively deal with and Delegations had to be engaged in, keeping in mind the common interest irrespective of the level of development. The Group also believed that the difficulties of effective enforcement existed in its application rather than in laws and regulations *per se*. Therefore, it was more important to learn lessons from the experiences of others and the ACE was the place where this could be done. Education was a key factor for shaping mindsets and developing morals for respecting and protecting inventions and creations. Group B was therefore looking forward to hearing experiences on awareness raising among school-age children and students, but also on educational tools for building respect for IP. In addition, the steady growth of globalized e-commerce had opened a door to a global economy. The internet allowed counterfeiters to reach a global audience at very low cost and minimal risk, benefiting from the anonymity, and consumers were extremely exposed to this phenomenon. Group B was thus interested to hear case studies of preventive actions and initiatives to prevent and combat cyber-counterfeiting. During the ninth session of the ACE, Delegations had heard presentations on the same work program. ADR could provide options to users of the IP system, depending on the nature of the issues, and contribute to realizing an effective and efficient business environment. Preventive action, such as the raising of public awareness, was also one of the critical elements for realizing effective IP protection including enforcement. In relation to the future work of the ACE, Group B noted with satisfaction the diversity of the existing proposals. The Group saw merit in all the proposals contained in document WIPO/ACE/10/3 Rev. which would contribute to a useful discussion. Sharing experiences of educating the youth, but also improving the work of the

authorities with jurisdiction in enforcement, particularly specialized authorities, could enrich the work of the ACE. In this regard, Group B welcomed the proposals submitted by Chile, the Philippines as well as the EU and its Member States.

10. The Delegation of Romania, on behalf of the CEBS Group, noted that the enforcement of IP rights presented significant challenges. From identifying the counterfeit and pirated products to stopping and preventing such activities, from raising awareness of the dangers or risks attached to using counterfeit or pirated products, to building the capacity of the enforcement authorities to address this problem. Moreover, the enforcement of IP rights was not only of relevance to the offline world, but also to the online environment, which kept expanding. The challenges would therefore get bigger and bigger. Against this background, the Group believed that the ACE offered governments and enforcement authorities a good framework to exchange opinions, experiences and best practices on various IP enforcement issues. The numerous presentations that would be made at this session by representatives from various regions, including the Central European and Baltic States, and the exhibition which would be displayed testified to the high level of interest attached by governments to the topic and consequently, to the importance of this WIPO body. The Group was convinced that the topics to be addressed at this session – ADR systems in the IP area and preventive measures – would generate an intense and interesting debate. With regard to future work, the CEBS group believed that focus should be maintained on how best to address nationally and internationally, through cooperation, the challenges related to IP enforcement and on how WIPO's role could be strengthened in this field, to the benefit of all countries. WIPO could and should play a critical role in this matter.

11. The Delegation of Brazil, on behalf of GRULAC, favored the thematic approach characterizing the work of the ACE, which was combined with the inclusion of presentations by experts. The Group was confident that this flexible format would allow for substantive progress in different areas of work. During the tenth session of the ACE, there would be the opportunity of sharing experiences, national policies and views on practices and operation of ADR systems in IP areas. The focus of the work would be the discussion of 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. The Group was looking forward to hearing contributions from all regions on these important public policy tools. With respect to future work, it expressed its support for the two proposals: (i) a discussion on how to intensify and improve WIPO's enforcement-related technical assistance; and (ii) capacity building and support from WIPO for training activities at the national, regional and international levels and for agencies and national officials with IP enforcement expertise. It was the Group's common understanding that future ACE activities would have to approach IP enforcement in the context of broader societal interests and especially development-oriented concerns, with a view that the protection and enforcement of IP rights (IPRs) 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.

12. The Delegation of Nigeria, on behalf of the African Group, expressed its support for the work of the ACE as a forum for discussion and exchange of information on IP enforcement issues and in relation to technical assistance and cooperation and without a mandate for norm-setting. It preferred the ACE to continue to work under the format which provides a forum for sharing ideas, national experiences and practices and exchange of views that help significantly the work of national offices in the area of building respect for IP. In relation to future work, the Group wished that the future work agreed by the ACE be balanced and that all work towards building respect for IP be in accordance with the Development Agenda Recommendation 45, so that IP enforcement could take into account broader societal issues and promote broader technical information and

transter of technology. The Group liked the format of the ACE as a marketplace of ideas, wished to learn from the exchange of views during this session of the ACE and looked forward to a successful session.

13. The Delegation of the European Union, speaking on behalf of the EU and its Member States, stated that it continued to support the ACE as a forum that allowed the EU and its Member States to interact with their international trading partners to discuss how their respective IP enforcement policies could link together more efficiently and effectively, as IP enforcement policies had to be outward looking. The Delegation noted that the EU Member States would make a number of presentations in the coming days. Focus would be placed on various issues such as national awareness-raising campaigns, including educational awareness-raising initiatives, as well as national enforcement experiences. With regard to developing a work program for the ACE, the EU and its Member States proposed that consideration be given to a new state-centric agenda point which would complement the issue-centric agenda points. The Delegation therefore proposed an agenda item on voluntary national presentations of IP enforcement regimes for the eleventh session. Under this new agenda item, WIPO Member States who volunteer to step forward would make a concise presentation on the status of their legislative, preventive and enforcement efforts in the field of IP. Based on this presentation, and assisted by documents prepared by the WIPO Secretariat, an interactive dialogue would follow between the presenting State and other Member States, as well as other accredited stakeholders. The presentation, background documents and the outcome of proceedings would be available on the WIPO website and would constitute an invaluable resource for IP practitioners and other international organizations dealing with IP related issues. In presenting their national reviews, it would be for Member States to set out the emphasis of their IP enforcement policies. The necessary technical assistance would be made available. The combination of a new state-centric item with issue-centric items allowed for a full coverage of all relevant IP enforcement issues and would allow for a broadening of the interesting and stimulating exchanges of views that had typified the working sessions of the ACE. The Delegation also welcomed all the other proposals that were currently on the table, which would allow for a rich discussion on the future work program of the ACE. The EU and its Member States were keen to participate in any further discussions on these issues during the tenth and future ACE sessions.

14. The Delegation of India, on behalf of the Asian Group, recalled that the ACE had the mandate to carry out technical assistance and coordination in the field of IP enforcement. The Group expected that the technical assistance provided by WIPO on IP enforcement should be in sync with the Development Agenda Recommendation 45, which calls upon WIPO to address IP enforcement in the context of broader societal interests and especially development-oriented concerns. The Group firmly believed that the protection and enforcement of IPRs should contribute to the promotion of technological innovation and, at the same time, was of the view that it should also transfer and disseminate technology, to the mutual advantage of producers and users in a manner conducive to social and economic welfare, and a balance of rights and obligations. The Group expressed its support for the proposal made by the Development Agenda Group, which calls for the review of possibilities to intensify and improve WIPO's enforcement-related technical assistance, including legislative assistance. Referring to the report on recent activities of WIPO in the field of building respect for IP prepared by the Secretariat, the Delegation noted that this report made reference to an evaluation of Strategic Goal VI and Program 17 on building respect for IP conducted by WIPO's Internal Oversight Division (IOD), which addressed WIPO's work in the area of IP enforcement. The Group requested that this report be placed for discussion and comments from Member States in the ACE. While the report concluded that WIPO's activities in this area were in compliance with the WIPO Development Agenda, the Delegation wished to see more factual details to be presented in order to corroborate this conclusion. Stating that adequate training was necessary to ensure that relevant government

institutions involved in IP enforcement could determine, on a case by case basis, the adequate balance between the interest of the right holder and the public, the Group wished to seek more clarity from the Secretariat on how it was providing adequate training to ensure this balance. The Group noted that members of the CEBS Group would make interventions during the discussions on specific agenda items and during the various presentations of the expert speakers and looked forward to contributing to the discussions in the Committee and hoped for an insightful session.

15. The Representative of TWN attached great importance to Committee as a forum to discuss the issues related to IP enforcement. However, it was important that this forum promoted a balanced approach to IP enforcement, especially looking at the developmental concerns. A binary approach was not advisable in the case of IP enforcement. Development concerns should be placed at the center of IP enforcement as otherwise one-sided enforcement activities could have adverse implications on the enjoyment of various Human Rights such as the right to health, the right to education and the right to science. In this context, the Representative recalled that medicines in transit had been seized a few years ago at various European Union ports. The Representative was of the view that the current approach to IP enforcement provided the narration of a criminal mafia, while there was no evidence to support such a claim. The Representative asked the WIPO Secretariat to adhere to the Development Agenda, especially in the context of technical advice, and called upon the Secretariat to avoid conflict of interest when carrying out technical assistance. In this context, it was important to place the IOD report on technical assistance on enforcement in the public domain.

16. The Secretariat noted that the IOD report was published and publicly available.

17. Under Agenda Item 6, the Committee heard 22 expert presentations relating to the various items of the work program (working documents WIPO/ACE/10/4 to WIPO/ACE/10/25) and two panel discussions. (The Committee valued the quality and balanced approaches of the working documents, the presentations and the panel discussions.)

18. The work program item on "Practices and Operation of ADR in IP Areas" started with two presentations on national experiences from the Center for Conciliation and Arbitration of the National Directorate of Copyright of Colombia and the Mediation Program of the IP Office of the Philippines (IPOPHL). Subsequently, Mr. Thomas Legler, Attorney-at-Law, Switzerland, presented the Fast-Track IP Dispute Resolution Procedure for Palexpo Trade Fairs, a dispute resolution procedure developed by Palexpo and the WIPO Arbitration and Mediation Center to protect exhibitors' and non-exhibitors' IP rights against infringements at trade fairs. This was followed by two presentations on domain name dispute resolution. Professor Dušan Popović, President of the Serbian Domain Name Dispute Resolution Body spoke about the Serbian experience in domain name dispute resolution and Professor Lawrence Nodine, Emory University School of Law, United States of America, considered whether the design elements of the Uniform Domain Name Dispute Resolution Policy (UDRP) might be effectively applied to other online disputes involving IP rights. The Secretariat provided its perspective in the context of the activities of the WIPO Arbitration and Mediation Center.

19. Discussions followed with interventions from the Delegation of the Philippines and the Representative of TWN.

20. In relation to the 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 Committee heard presentations under the sub-items "Awareness Raising", "Educational Tools for Young People", "Preventing Infringements in the

Online Environment", "National Strategies to Build Respect for IP" as well as a panel discussion on "Strategic Cooperation".

21. Under the sub-item "Awareness Raising", one regional and four national experiences were presented. The American Chamber of Commerce (AmCham) Mexico presented a study on consumer attitudes to piracy and counterfeiting. The two subsequent presentations concerned the animated cartoons on respect for IP created by the League of Arab States in partnership with WIPO, which were originally presented at the ninth session of the Committee. The Industrial Property Protection Directorate, Ministry of Industry, Trade and Supply, Jordan, presented research on the effectiveness of the cartoons with various audiences and outlined its future plans in relation to awareness raising. The IP and Competitiveness Department of the League of Arab States reported on the reception of the cartoons by a number of its Member States, and also about the League of Arab States' other activities in the field of awareness raising.

22. The Spanish Patent and Trademark Office, Ministry of Industry, Energy and Tourism, Spain presented its recent campaign, "Don't Be Complicit in Counterfeiting", highlighting the effects of counterfeits and calling for consumer responsibility as a key tool to prevent counterfeiting. Finally, the Kenya Copyright Board gave a presentation describing its work with various different stakeholder groups, including enforcement agencies, to improve awareness and ensure effective, balanced enforcement.

23. Discussion followed with interventions from the Delegations of the Republic of Moldova, Kenya, Panama, El Salvador, Paraguay, Mexico, the Philippines, the United Kingdom, Zambia, Mexico, Spain, Nigeria and Greece, and the Representatives of TWN and the International Association for the Protection of Intellectual Property (AIPPI).

24. Under the sub-item "Educational Tools for Young People", four national experiences were presented. The Italian Patent and Trademark Office presented research on consumer attitudes and its long-running competition on IP for young people, "Small and Big Inventors are Growing". The Japan Patent Office (JPO) described the various tools used to raise awareness of IP, in particular among the young. These included annual campaigns, a "Children's Visit Day" at the premises of the JPO, as well as diverse educational materials and seminars on copyright by the Agency for Cultural Affairs . The Intellectual Property Corporation of Malaysia (MyIPO) reported on its achievement and current activities, which included a mobile information center and its IP Summer Camp program. The United Kingdom Intellectual Property Office presented its research on consumer attitudes and its outreach activities for various age-groups, including Shaun the Sheep's "Cracking Ideas Challenge" for children and the "Karaoke Shower", aimed at young adults and teenagers. Finally, Mr. Ian Wall of the Film Space, United Kingdom, presented the WIPO educational materials on respect for copyright, made possible by the support of the Ministry of Culture, Sports and Tourism of the Republic of Korea, for young people in the age range 10 to 15 years.

25. Discussion followed with interventions from the Delegations of the Philippines, the Republic of Korea and Germany and from the Representative of TWN.

26. A panel discussion took place, moderated by Mr. Grega Kumer, Vice-Chair of the Committee, on public communications campaigns on respect for IP and awareness tools for young people. Representatives of the National Registry of Costa Rica, the Mexican Institute of Industrial Property (IMPI), the State Agency on Intellectual Property of the Republic of Moldova (AGEPI), the Industrial Property Office of the Republic of Slovakia, the Companies and Intellectual Property Commission of South Africa and the European Observatory on Infringements of Intellectual Property Rights gave short presentations.

25. Discussions followed with interventions from the Delegations of Congo, Romania, Greece and Brazil and from the Representatives of TWN, the International Chamber of Commerce and AIPPI.

26. Under the sub-item "Preventing Infringements in the Online Environment", six presentations were made. Prof. Brett Danaher introduced economic evidence on the effectiveness of various government and industry anti-piracy interventions. Three national experiences followed where the National Anti-Counterfeiting Committee of France (CNAC) explained its activities to prevent and combat counterfeiting as well as the work of the cyber-counterfeiting unit of French customs; from the Republic of Korea, the Ministry of Culture, Sports and Tourism explained the remit of the Copyright Protection Center in the repression of online and offline illegal copying and the Korean Intellectual Property Office (KIPO) illustrated its efforts towards promoting global IP awareness, restricting online transactions of counterfeit goods, and improving national laws and regulations; and the Ministry of Culture of Denmark reported on voluntary codes of conduct recently concluded in Denmark with the overall aim of reducing piracy and promoting lawful behavior on the internet. Finally, two industry initiatives were shared with the Federation of the Swiss Watch Industry (FHS) introducing the work of its Internet Unit against online counterfeiting; and the Interactive Advertising Bureau (IAB) Poland providing an overview of its initiatives against online advertisement misplacement.

27. Discussions followed with interventions from the Delegations of Germany, Russia and the Representative of TWN.

28. Under the sub-item "National Strategies to Build Respect for IP", three national experiences were shared. The State Agency on Intellectual Property of the Republic of Moldova reported on the progress made in the implementation of the National Strategy on Intellectual Property towards building respect for IP, in particular through education and awareness-raising campaigns. The Zambia Police Service presented the development and application of the PESTEL Model in the fight against counterfeiting and piracy. The Danish Patent and Trademark Office (DKPTO) described the newly established Enforcement Unit of DKPTO and its role, including on guidance in concrete infringement cases.

29. Discussion followed with interventions from the Delegations of Kenya, Morocco, Paraguay, the Philippines, the United States of America and the Representative of Third World Network.

30. Under the sub-item "Strategic Cooperation", six Member States shared their experiences in establishing ways to cooperate amongst various national Government authorities in order to build respect for IP, notably the representatives of the DKPTO, the Zambia Police Service, the Observatory on Enforcement of IP Rights of the Republic of Moldova, the CNAC, the IPOPHL and the Office of the Attorney General of Mexico. Introductions outlining the specificities of the national cooperation scheme were followed by a discussion amongst the panelists.

31. Discussion ensued with interventions from the Delegations of Congo, Colombia, El Salvador, Morocco, Norway, the Philippines, the Russian Federation, the United States of America, and the Representatives of International Trademark Association (INTA) and TWN.

XX. The Committee is invited to adopt the Summary by the Chair, set out in paragraphs 1-xx, above.

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