

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

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on the Enforcement
of Intellectual Property Rights
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1. Introduction

- The Problem: 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

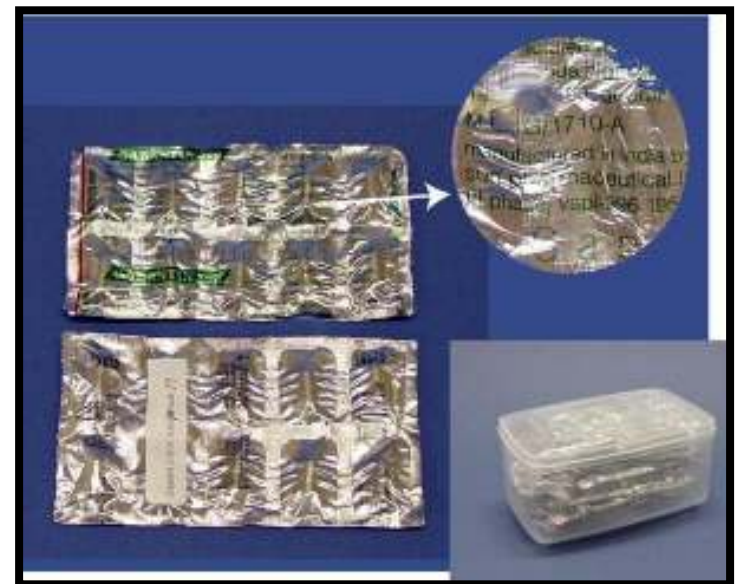
- Impact for Right Holders:
 - Unfair competition.
 - Negative impact on brand value and reputation.
 - Negative impact on sales (market shares), royalties and licensing.

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

- Impact for public authorities:

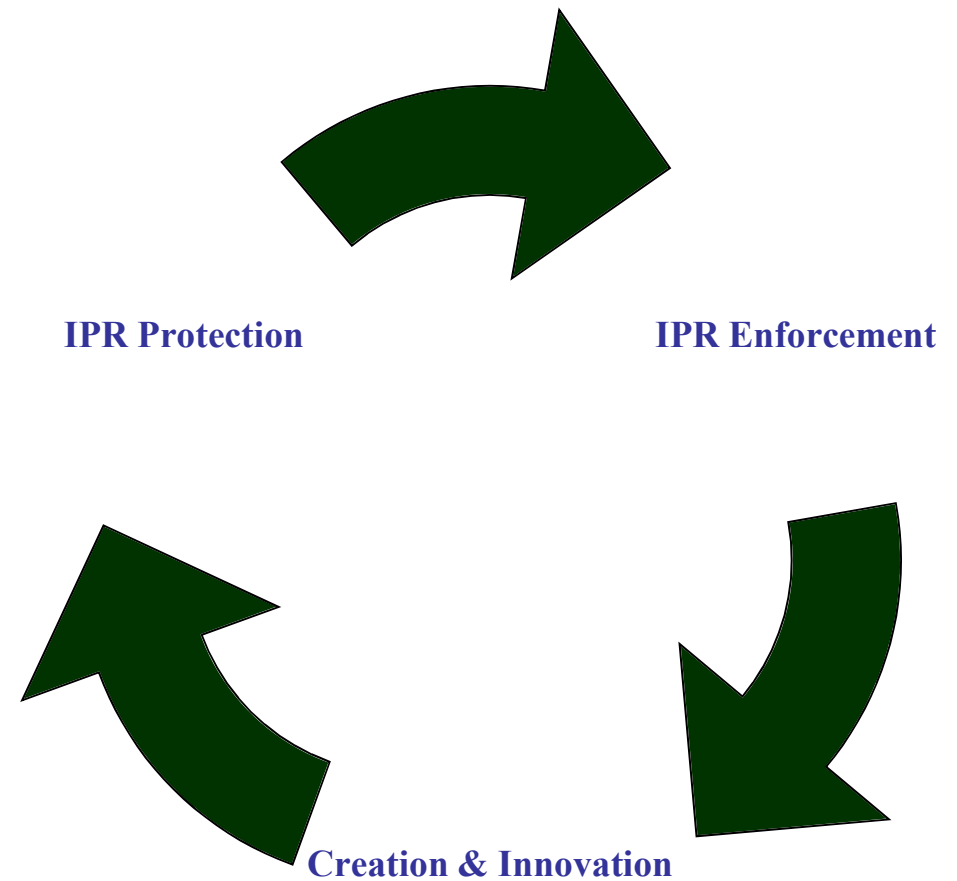
- Social values



- Cultural identity

2. Counterfeiting & Piracy

Ensuring effectiveness to IPRs



2. Counterfeiting & Piracy

IP Enforcement - Remedies

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

- At international level:
 - **Paris Convention**: Art. 9; 10; 10*ter* (see TRIPS, Art. 2);
 - **Berne Convention**: Art. 13; 15; 16 (see TRIPS, Art. 2);
 - **WCT**: Art. 11; 12; 14 – **WPPT**: Art. 18; 19.

2. Counterfeiting & Piracy

- Plurilateral (ACTA, FTAs); Bilateral
- Regional (EU, OAPI, ...)
 - European Union
 - Directive No. 2004/48/EC on the enforcement of IPRs
 - **Customs**: Regulation (EC) No. 1383/2003 concerning customs action against goods suspected of infringing certain IPRs – New Regulation (EU) No. 608/2013 concerning customs enforcement of IPRs
- National

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

- WIPO and IP Enforcement : WIPO is not a supranational operational agency in the field of IP enforcement

- **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), 7th (2011) and 8th (2012) Sessions:
 - Review of methodologies and gaps in the existing studies re. counterfeiting & piracy – see, e.g, WIPO/ACE/7/5 (http://www.wipo.int/meetings/en/details.jsp?meeting_id=22170)
 - Incl. attempts to develop new methodologies and new studies: see WIPO/ACE/8/7 (RAND methodology), available at http://www.wipo.int/meetings/en/details.jsp?meeting_id=25015

4. Advisory Committee on Enforcement

- 6th (2010), 7th (2011) and 8th (2012) Sessions:

- Alternative models, such as “soft law” developments

- See, e.g.: French Charter Brochand-Sirinelli (WIPO/ACE/7/8 http://www.wipo.int/meetings/en/details.jsp?meeting_id=22170); Voluntary Mechanisms for Resolving IP Disputes (WIPO/ACE/8/10); BASELWORLD panel (WIPO/ACE.8/11), available at http://www.wipo.int/meetings/en/details.jsp?meeting_id=25015)

- Disposal of counterfeit goods

- See WIPO/ACE/6/8 - http://www.wipo.int/meetings/en/details.jsp?meeting_id=20199

4. Advisory Committee on Enforcement

- 6th (2010), 7th (2011) and 8th (2012) Sessions:
 - Consumer attitudes and perceptions on counterfeiting and piracy
 - See, e.g.: BASCAP Research Report (WIPO/ACE/6/6 - http://www.wipo.int/meetings/en/details.jsp?meeting_id=20199); Study in Hungary (WIPO/ACE/8/4 - http://www.wipo.int/meetings/en/details.jsp?meeting_id=25015)

4. Advisory Committee on Enforcement

- Future work of ACE:
 - Practices and operation of alternative dispute resolution systems in IP areas
 - 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.
 - Proposals in relation to “Review of awareness building activities as a means of building respect for IP rights, especially among school age children and students” and “Review of possibilities to intensify and improve WIPO’s enforcement-related technical assistance, including legislative assistance” for future consideration.

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, UNEP, UNECE, etc.) and private rightholders
- Including: Global Congress on Combating Counterfeiting & Piracy





- Organized in public-private cooperation: WIPO, WCO, INTERPOL and the private sector (ICC-BASCAP, INTA)
- Key statements: podcasts of the sessions and other information available at <http://www.ccapcongress.net/>
- 7th Congress Istanbul, April 24-26, 2013
 - Opened by Turkish Prime Minister
 - Over 850 delegates from more than 100 countries
- Topics:
 - Building Respect for IP
 - Determining Jurisdiction in Cross-Border Cases
 - Public-Private Partnerships and other Self-Regulatory Measures
 - Capturing the Elusive Infringer on the Internet
 - Awareness and Education
 - Etc.

5.2. Legislative & Technical Assistance

- Only on request from the WIPO Member States - *Increasing*
- WIPO services include:
 - **Legal assistance**: updated legal frameworks to comply with the international standards on IP enforcement.
 - **Strategic assistance** to adopt enforcement strategies.
 - **Capacity-building activities**: judiciary, law enforcement officials.
 - **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/