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**Review of the implementation of the programme of work
since the fifth session and review of the work of subsidiary bodies
after the 2005 ECE reform:**

Team of Specialists on Intellectual Property

Good practices and policy recommendations on raising awareness of the role of intellectual property rights in innovation and the dangers and economic costs of intellectual property rights infringements

Note by the secretariat¹

I. Introduction

1. In its Programme of Work for 2011 and beyond, the UNECE Committee on Economic Cooperation and Integration mandated the Team of Specialists on Intellectual Property (TOS-IP) to develop good practices and policy recommendations on raising awareness of the role of intellectual property rights (IPR) in innovation and the dangers and economic costs of IPR infringements (ECE/CECI/2010/2, Annex, p.11, para.3(e)).

2. The present note is based on the presentations and discussions at the substantive segment of the fifth session of TOS-IP held in Geneva on 7-8 July 2011. It reflects and benefits from the experiences of all relevant stakeholder groups, including national policy makers, global IPR owning companies, small and medium-sized enterprises, the academic community, as well as relevant international organizations.

3. The note is structured as follows. It begins with some general remarks on the importance of IPR awareness raising and then presents good practices and policy recommendations on awareness raising in the following three areas: the dangers and economic costs of IPR infringements; the role of IPR in technology transfer and innovation;

¹ This document has been submitted on the above date due to unexpected technical reasons.

and how small and medium-sized enterprises (SMEs) and entrepreneurs can access the IPR system and can manage IPR for business development.

II. The importance of IPR awareness raising and the case for policy support

3. Intellectual property rights regimes provide a legal framework within which innovators can obtain (sometimes temporary) exclusive rights to the commercial use of their inventions. Formal IPR provide legal titles that can in principle be enforced in court against infringement by third parties. Moreover, in many jurisdictions some forms of infringement are considered as crimes, entailing prosecution by the law enforcement authorities.

4. However, experience suggests that with any set of laws, rules or rights, applying and enforcing them will be relatively straightforward, cost effective and harmonious if the laws, rules or rights in question are generally perceived as broadly legitimate and beneficial to society at large. By contrast, application and enforcement tend to be difficult, expensive and contentious if the laws, rules or rights in question are perceived by a significant part of the population as lacking legitimacy or not benefiting them. Where this is a problem, raising awareness about the true nature of the laws, rules and rights in question and about the benefits they bring can be part of the solution.

5. In the field of intellectual property, significant problems of both application and enforcement exist in many countries. Copyright piracy and trademark counterfeiting are a growing problem, in part because there are plenty of enthusiastic customers of infringing products. In academic settings, researchers frequently are unenthusiastic about IPR protection and commercialization, thereby compromising knowledge transfer. And many small and medium-sized entrepreneurs do not use IPR, thereby foregoing opportunities for growing their businesses. In all these cases, initiatives that raise awareness about the economic and potential health and safety damages of infringements and about the benefits of IPR in terms of stimulating innovation, creating jobs and stimulating economic growth can be part of the solution.

6. There are two reasons why policy makers at various levels may want to consider supporting IPR awareness raising. The first is that the effectiveness of awareness raising generally depends on the credibility of the messenger. Policy can play a crucial role on the one hand in encouraging awareness raising campaigns to provide a fair and balanced view of the benefits of IPR to society and the damages of infringements, and on the other hand in lending impartiality to such campaigns.

7. The second reason why policy support at appropriate levels may be required is that the benefits of enhanced IPR awareness are frequently shared broadly, and that, without policy support or coordination, interested private parties may be tempted to free-ride on awareness raising campaigns mounted by others, rather than contributing to the costs of such campaigns, a problem that could lead to awareness raising remaining under-funded and ineffective.

III. Raising awareness of the dangers and economic costs of IPR infringements

8. The international trade in copyright infringing products (piracy) and trademark infringing products (counterfeiting) has been growing in absolute size and in the number and types of products it is affecting. It is no longer confined to luxury products and

medicines, but has branched out into virtually the entire product space, including everyday consumer products, foodstuffs, toys, electrical appliances, machinery and equipment and spare parts.²

9. Counterfeiting and piracy are highly footloose industries, where producers move with relative ease between host countries in response to variations in enforcement intensity. They are also globalised activities where production of components and assembly are often geographically separated, and where counterfeit and pirated goods often cross many borders before reaching their final destination, all in an effort to avoid detection and prosecution.

10. Counterfeiters and pirates have also diversified their distribution channels from traditional high-volume shipping to advertising and selling over the internet, electronic distribution of movies, music, and software, and small-sample shipping via mail delivery services in an effort to increase the costs of monitoring and intercepting IPR infringing shipments.

11. Due to the above developments, legitimate copyright- and trademark-based companies and IPR enforcement authorities, such as customs agencies, police, and internal market surveillance authorities, are being faced with increasing case loads and rising enforcement costs. The response has focused mostly on deploying additional financial and human resources to monitor, intercept, and destroy IPR infringing goods and to prosecute infringers, and on stepping up both the cooperation between business and the various national enforcement agencies, and the international cooperation on this front. This has also been the main focus of TOS-IP's work on IPR enforcement.

12. However, the international experience to date suggests that the above response is likely to remain inadequate because it focuses solely on the supply side of the problem, i.e. on preventing infringing products from being manufactured, marketed, distributed and sold.

13. Available evidence suggests that where there is a demand for a product, the market will tend to find ways to supply it. The costs of curbing this supply will be high, and in the case of some countries with economies in transition, as well as for many smaller companies, prohibitive. Any lasting solution to the problem of trademark counterfeiting and copyright piracy will therefore also have to involve curbing the demand for such goods.

14. Counterfeiting today is not confined to consumer products only. It has also affected product categories typically purchased by enterprises or even government procurement offices. Awareness raising campaigns therefore need to be devised also for these categories of potential customers. By the same token, awareness raising campaigns may have to also target policy makers in order to strengthen the political support for IPR enforcement.

15. One important avenue through which to raise awareness is by educating potential customers about the threats that counterfeits pose for innovation, creativity, economic development, and consumer health and safety. It is important in this regard to recognize that these threats differ across different types of products, and that they may resonate differently with different types of customers.

16. The argument that piracy and especially counterfeiting undermines legitimate innovative businesses and thereby jeopardizes one of the main sources of economic development is applicable to virtually all product categories. Where the customers of the counterfeiters are other businesses or governments, rather than individual consumers, as is frequently the case for machinery and equipment and their spare parts, these economic arguments tend to work well. However, the international experience suggests that it can be

² And even counterfeit hotels and consulting companies.

a challenge to use economic arguments to convince consumers to stop buying counterfeit products because they may prefer to think that their own individual purchase will not have any significant effects, or that any negative effects of their purchasing decision will befall mainly foreign companies or economies.

17. The argument that IPR infringing products pose threats to consumer health and safety frequently resonates more powerfully with consumers than the above economic arguments. However, awareness raising campaigns cannot be based on such arguments for products where such threats do not exist, such as for pirated music or movies.

18. More generally, the international experience suggests that in order to be successful, it is important for awareness raising campaigns to present a realistic picture of the economic damage and health and safety threats of IPR infringing products. In the past, some industry associations have operated with unverifiable claims about these costs and threats, and this may have undermined rather than supported consumer acceptance of IPR.

19. Mounting effective awareness raising campaigns is further complicated by the fact that potential customers are highly heterogeneous. Experience shows that in order to create effective awareness raising campaigns, it is essential to know as much as possible about the target audience and to tailor campaigns accordingly.

20. One key aspect in this regard is customer purchase motivation. One obvious distinction here is the one between consumers on the one hand, and companies and governments on the other hand. Among consumers, it has proved critical to distinguish between those seeking a cheaper version of a product, those seeking fast and easy access (for instance through file sharing), and those who simply enjoy "beating the official system" (so-called Robin Hoods). Awareness raising campaigns also should differentiate between "complicit" buyers, who know that they are buying fake products, and "naive" buyers, who buy fake products unknowingly;

21. In order to identify the most effective message to convince a given target audience to stop purchasing IPR infringing goods, it is often useful or even imperative to commit resources to a preliminary field study to correctly and completely understand the characteristics and motivations of the target audience, and to design the awareness campaign on this basis. Campaigns which fail to tailor the main message to the characteristics and motivations of the audience may not only be ineffective but may even backfire, i.e. strengthen rather than weaken customer motivation to buy IPR infringing products.

22. Not all consumers who buy IPR infringing goods do so in order to save money or because they do not know they are buying fakes. Some consumers do so because they have never developed a respect for intellectual property and feel entitled to cheap or even free products that infringe IP. Such attitudes are usually formed at a relatively early age and may prove difficult to change later on. There is therefore a growing number of initiatives to incorporate IPR awareness raising in school curricula in order to reach students at an early age.

23. In addition to educating potential customers about the dangers of counterfeits and pirated products, companies also need to make sure that legitimate products are sufficiently attractive to consumers relative to counterfeit or pirated alternatives. This may involve tailoring the packaging, package sizes, modes of delivery, or pricing to different markets and customer groups, including appropriate international pricing strategies and policies on re-imports.

24. The international experience shows that there is no general answer to the question which entities should engage in customer awareness raising. There are examples of campaigns run by industry associations, by enforcement authorities, such as the police, by

intellectual property offices, by governments and by coalitions of different stakeholders. By the same token, awareness raising campaigns can be local, national or international. The involvement of different stakeholders and the geographical reach of the campaign will have to depend on the degree to which they are affected by the problem of counterfeiting and piracy, the extent of their knowledge of the target audience, and the credibility with which they can transport the message.

25. Experience suggests that one challenge in this regard has been to engage consumer associations in IPR awareness raising campaigns. Engaging these associations is desirable because they are close to consumers, have significant knowledge about them, and enjoy credibility. At the same time, consumer associations have frequently been reluctant to engage in such campaigns precisely because their mission is to represent consumer interests, often in disputes with companies, and much like the consumers who would be the ultimate targets, consumer associations lack awareness about the economic cost and potential safety and health risks of IPR infringing goods. It may therefore be necessary in a first step to include consumer associations in the target audience of an awareness raising campaign, before they can become partners at a later stage.

26. Counterfeiters and pirates increasingly use the internet as a channel to advertise, market and sell their products. This activity is difficult for national authorities to curb or regulate because websites that offer counterfeits and pirated products are easy to set up and to move to servers in jurisdictions where enforcement is ineffective. However, the fact that the internet has become an increasingly important conduit for counterfeiting and piracy can also be used for IPR awareness raising. There is a growing number of examples where either rightsholders or enforcement authorities have set up decoy websites, which pose as sites where consumers can purchase counterfeits or pirated products, but which then lead the consumer to a site which educates on the dangers and costs of these products.

27. A good practice which combines enforcement actions with elements of public awareness raising on the problem of counterfeiting and piracy consists in destroying seized counterfeit and pirated materials in public in a highly visible way and to use the occasion to engage the media to transport the message about the dangers and costs of IPR infringements.

28. An important caveat to be kept in mind is that IPR awareness raising campaigns targeting consumers are a relatively recent development. Examples targeting companies or government procurement offices as customers are still rare. As a consequence, knowledge on the impact of such campaigns in terms of actually reducing the demand for counterfeit and pirated goods is still quite limited. In part this is also due to the fact that even otherwise well-designed campaigns frequently lack a built-in evaluation mechanism which would track impact and allow to learn from experience for subsequent campaigns. Incorporating systematic evaluation and learning into awareness raising campaigns is therefore considered good practice.

IV. Raising awareness among academics of the role of IPR in technology transfer and innovation

29. Leading economies spend significant amounts of resources on research at public and private research institutions. The fruits of this research can have important commercial applications. However, experience suggests that it takes an active policy, again supported by significant resources, to transfer these research results to the business sector for commercial exploitation.

30. Intellectual property rights have a key role to play in this process because they secure temporary, transferable exclusive rights to the commercial exploitation of a research

result. They are therefore essential both for licensing new technologies to existing businesses for commercialization, and for raising funding for new start-up companies to exploit such technologies.

31. However, the protection of research results by means of formal IPR often faces significant obstacles at research organizations. Scientists are motivated typically by the quest for new knowledge. They are not primarily interested in monetary rewards, and they are frequently not very entrepreneurial. Some erroneously see the process of obtaining formal IPR protection for their research results at best as an unnecessary nuisance that takes their valuable time away from research, and at worst as something that runs counter to the goals of academic research by preventing scientists from publishing their results and accessing and using the results of their peers.

32. The challenge for university knowledge transfer managers and for university top management therefore is to make scientists aware of how IPR protection and IPR management can actually advance their research and career interests and to thereby turn passive resistance to IPR protection policies into active support.

33. The key benefits which researchers can obtain from the protection and commercialization of IPR, and on which university awareness raising campaigns can focus, are more research cooperation with industry, more industry financing for research projects, new research ideas from interactions with industry researchers, the validation of research results through industrial application, and financial rewards by sharing in the proceeds of successful commercialization. For students, such cooperation is attractive because they can generate critical job market opportunities. Cooperation with industrial research partners in awareness raising may therefore be helpful.

34. Experience suggests that in order for IPR awareness campaigns to be effective, they need to be seen to be supported throughout the research organization from the top down. Knowledge transfer is an activity which requires upfront investment in order to yield benefits - for the research organization and society – in the medium to long term. For this upfront investment to yield an adequate return, all relevant departments must get actively involved in the knowledge transfer process. It is frequently not enough for the knowledge transfer office to campaign in favour of IPR protection as part of this upfront investment. If left to its own devices, its message is in danger of being ignored by academic departments which pride themselves on their independence and may prefer to focus on their purely academic tasks. It is therefore important for top management to consistently send the message to all departments that successful IPR management is viewed as critical for the organization as a whole.

35. The credibility, and hence success of IPR awareness raising efforts also depends critically on how well the message is aligned with the actual practices of the research organization. This means for instance that the knowledge transfer office must be endowed with sufficient financial and human resources to effectively identify commercially promising research results, to protect them with IPR, and to successfully commercialize them. Where these resources are lacking, it will be very difficult to persuade researchers to cooperate on IPR protection.

36. Relatedly, the effectiveness of IPR awareness raising in academic settings also depends on the proper alignment of career incentives provided to researchers. If career incentives remain geared exclusively towards purely academic achievements, no amount of awareness raising will succeed in inducing researchers to devote time and effort to IPR protection and knowledge transfer. It is therefore considered good practice to fully integrate IPR management into the internal value system of the research organization. This means that research organizations should be prepared to recognize achievements in knowledge

transfer on an equal or similar footing with scientific publications or work in the institutions self-administration.

37. Leading examples of IPR awareness raising in academic settings do not focus only on explaining to researchers the potential benefits of IPR protection and diffusing concerns, such as those about publishing delays. Instead, they also raise awareness among researchers about how to go about IPR protection and management. This includes explaining the process from the discovery of a research result to its disclosure to the knowledge transfer office, the first assessment of the commercial potential, the development of a commercialization strategy, including IPR protection, in consultation with the researchers, the IPR protection itself, such as the drafting of a patent application, and the eventual revenue sharing policies. It also includes explaining the support institutions and resources available to researchers.

38. In a similar vein, leading awareness raising programs also do not only focus on the protection through IPR of research results generated at the institution itself. They also raise awareness of the risk to which the institution and its researchers could be exposed from infringing the IPR of third parties. A key component of IPR awareness raising in research organizations therefore is to explain the need for IPR due diligence in the design of research projects, and in research cooperation, in order to make sure the institutions involved obtain legal rights to the use of any inputs they may need to carry out their own research and which may be protected by third party IPR, such as copyrighted databases or patented research technologies.

39. Another instance where researchers need to be made aware of the need to respect the rights of other parties is research cooperation with industry, where the industrial partner may acquire certain rights to the results of the research. Among other things, this may affect the perceived conflict between the pressure to publish to advance academically and the need to delay publishing until a patent has been filed. Where cooperation partners acquire certain rights to the use of research results, the alternative to patenting frequently is not that the results can be published freely, but that the industrial partner requests certain results to be kept secret and not be published at all in order to safeguard their commercial interests.

40. IPR awareness raising programs in research organizations need to be tailored to different academic fields because fields differ in the kinds of knowledge they generate, the appropriate conduits for knowledge transfer to industry and society at large, and the appropriate types of IPR needed to facilitate this process. By the same token, such programs should be tailored to the mission of the research organization in question and to its main areas of strength.

41. Leading research institutions are increasingly expanding their IPR awareness raising campaigns beyond their own researchers to include students from the time they enter university. Some are even extending such campaigns to high schools.

42. As in the case of IPR awareness raising for customers, it is advisable to incorporate impact assessments and systematic learning in academic IPR awareness raising programs.

V. Raising awareness among small and medium enterprises and entrepreneurs on how to access the IPR system and how to manage IPR for business development

43. Generally, the vast majority of small and medium-sized enterprises in an economy do not make regular and extensive use of the formal IPR system. This is true throughout the UNECE region. To a considerable extent this state of affairs simply reflects the fact that

most small and medium-sized enterprises are not very innovative and therefore do not have a systematic need to protect inventions through formal IPR.

44. However, in leading economies there is typically a relative small percentage of SMEs which are very dynamic and highly innovative and which have the potential to grow into large companies and to contribute substantially to net job creation and economic growth. Nurturing such enterprises should be a key objective of economic policy.

45. Depending on the industry and the country in question, some of these enterprises are systematic users of the formal IPR system. However, the available evidence from a large number of countries suggests that even actually or potentially innovative SMEs frequently face a number of obstacles when trying to make use of intellectual property (IP) for growing their business, and that these obstacles may actually hold back innovation, job creation and growth.

46. Lack of IPR awareness is one of these obstacles. SMEs and entrepreneurs frequently lack a coherent IP management strategy, they lack adequate knowledge to develop and manage their IP portfolios, they do not fully understand the formal IPR system, and they do not fully understand the resource requirements for adequate IPR protection and enforcement.

47. These problems are compounded when SMEs are operating on international markets where they need to deal with several different national IPR systems.

48. Lacking IP awareness not only prevents SMEs and entrepreneurs from fully exploiting their own innovative potential. It can also cause them to inadvertently infringe on the IPR of third parties, leading to potentially very costly legal disputes. Again, this problem is compounded when SMEs are entering international markets.

49. IPR awareness raising programs for SMEs and entrepreneurs therefore need to start by explaining both the tangible economic benefits which IPR can bring to a company and the potentially serious negative consequences of neglecting IPR issues, and then move on to laying out the resources available to support SMEs in IPR management.

50. There is a considerable heterogeneity in how SMEs are using and should be using IPR depending on factors such as industrial sector, size, innovative activity and whether they operate nationally or internationally. Well-designed awareness raising programs need to adequately take this heterogeneity into account.

51. Generalized, public "one-size-fits-all" campaigns can do no more than alert some SMEs to the issue. To induce changes in their approach to IPR management will typically require a more tailored "personalized" approach relying on direct contacts with SMEs and finding out what their more specific needs are.

52. A key challenge in this regard is how to reach SMEs and entrepreneurs. Many awareness raising programmes struggle to reach their target audiences because they are being offered by intellectual property offices interested in expanding their customer base. Those SMEs that are not currently using IP, and therefore are not in regular contact with IP offices to begin with, often fail to notice these programmes. There is therefore a need for awareness raising programmes to be designed and delivered in partnership with enterprise promotion agencies, SME associations, business angel networks (where they exist) and other entities that are already in regular contact with SMEs, including SMEs that are not currently using formal IPR.

53. For the same reason, well-designed awareness raising campaigns *inter alia* aim to work with professionals who regularly provide services to SMEs and entrepreneurs, such as lawyers, accountants, engineers, designers so that they can routinely incorporate IPR

management into their interactions with SMEs. To achieve this, it may be necessary to also raise the IPR awareness of these professionals.

54. In part related to the fact that many SME awareness raising programs are offered by IP offices, the vast majority of support programmes currently available focus largely on patenting. This is unfortunate because evidence from many countries suggests that patenting is less important for most SMEs than other forms of formal and particularly also informal IP, such as secrecy, lead time advantages, design complexity etc. Awareness raising and other support programmes should be designed so that they are broad enough to cover the whole range of formal and informal IP protection mechanisms that may be relevant to SMEs.

55. Another reason why IP offices should consider cooperating with enterprise promotion agencies and other business professionals in designing and delivering SME awareness raising and education programmes is to make sure these programs do not only present the issue from a strictly legal point of view, but incorporate a genuine business focus and are presented in a way that is readily accessible to busy entrepreneurs.

56. A strong business focus is recommended inter alia because of the dynamic nature of the innovation process and the constant changes in innovation models used by innovative SMEs. Changes in the innovation process may require corresponding changes in how intangible assets need to be protected and managed. Well-designed awareness raising campaigns need to be sufficiently flexible and up to date to keep up with these changes.

57. A critical element for the success of awareness raising programs is also that they are closely integrated with tangible IPR support programs, such as programs that provide professional advice on specific IPR management questions, or subsidies which help to contain the costs of IPR protection. Closely integrating these two kinds of programs has the advantage that it assists SMEs to move rapidly from the realization that IPR can have important benefits for their business to concrete actions that help them realize these benefits. This can significantly enhance the chances that awareness raising programs lead to actual changes in behaviour.

VI. Concluding remarks

58. IPR awareness raising is an important challenge in all three areas covered in this document, i.e. in the consumer sphere, in academic research settings and for SMEs and entrepreneurs. Beyond the specifics of each of the above areas, there are a number of common threads that emerge from a review of good practices and policy experiences. Among these are the following:

(a) The general rationale for awareness raising campaigns is to facilitate the application and enforcement of IPR by increasing understanding and acceptance of IPR among key stakeholder groups.

(b) Policy support at appropriate levels may be needed to ensure the credibility of campaigns and to overcome free-rider problems.

(c) In order to be effective, awareness raising campaigns should be based on a thorough understanding of the characteristics, motivations and needs of the target audiences and need to tailor their messages accordingly.

(d) Effective delivery of awareness raising campaigns often requires cooperation between various stakeholders with complementary expertise, including public-sector and private-sector stakeholders.

(e) The chance that awareness raising programs do lead to changes in behaviour is enhanced if they go beyond explaining the benefits of IPR and the drawbacks of infringement, and also educate about available support institutions and programs that can assist the target audiences in realizing the benefits and avoiding the drawbacks.

(f) Awareness raising programs cannot compensate for misaligned incentives. These programs must be seen as complementary to policies that align the incentives of target audiences in favour of optimal use of IPR, such as policies that make legitimate products attractive relative to fakes, or policies that reward university researchers for active IPR protection.

(g) A frequent problem even in well-designed awareness raising programmes is that the impact of these programmes is not being systematically assessed and that opportunities for learning and improving such programmes are not being fully realized. The implication is that systematic evaluation and impact assessment should be incorporated into awareness raising programs wherever possible.
