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The European Union and the Enforcement of IPR

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■ European Commission

Outline

- The importance of IPR enforcement
- IPR Enforcement in the European Union (EU)
 - Enforcement within the EU
 - Enforcement at the external border
 - Enforcement in third countries
- The Enforcement Strategy

Why is IPR enforcement important ?

- Protection of right-holders
 - Incentive and reward to creativity and innovation
 - Incentive to investment, job creation, protection of tradition
- Problem of public health
 - Dangers of fake food, pharmaceuticals, toys, seeds, electrical appliances, automobile and aircraft spare parts

Why is IPR enforcement important ?

- Issue of public order and security
 - Links with organised crime and terrorism
- Legal commitment
 - Obligation to enforce IPR in national legislations
 - As well as in bilateral (Europe Agreements, MEDA)...
 - and multilateral agreements (WTO - TRIPs, WIPO)

IPR enforcement in the EU

- The split of competencies between the EU and its Member States
 - Legislative power - Shared responsibility
 - Justice, Police, Administration, Customs - Limited but increasingly important role of the EU
 - Trade related aspects of IPR - Competency of the EU

Enforcement Directive

- Directive 2004/48/EC
 - need for national implementing provisions within 2 year deadline
- Applies to all EU - regulated and national IPRs
 - trade marks, copyright, patents, designs, GIs etc.
- Principle of “best practice”
 - build on existing measures in MS
 - not beyond existing practice

Enforcement Directive

- "TRIPS plus"
- Member States may go further
- Applies to all types of IPR infringements

Enforcement Directive “TRIPs plus” elements

- right of representation for collecting societies and trade associations
- power to seize documentary evidence relating to the suspected infringement (as well as the suspect goods themselves)
- obligation for courts to provide information to right-holders on the source of infringing goods ('right of information')

Enforcement Directive "TRIPs plus" elements

- "interlocutory injunctions", in advance of a decision on the merits of a case, to prevent offenders from profiting from an infringement
- the access to offenders' bank, financial or commercial documents accounts
- the recall of infringing goods at the offender's own expense

Enforcement Directive “TRIPs plus” elements

- choice for the right-holder of either lump sum damages or compensation for all damages, including other factors than economic elements (ex: moral prejudice)
- payment to the successful party of other legal costs than just attorney’s fees
- publication of judicial decisions at the expense of the infringer

Enforcement Directive Last but not least

- Presumption of ownership of copyright (extends beyond Berne Convention)
- Codes of conduct by professional associations to contribute towards the enforcement of IPR
 - including by optical disc manufacturers, to combat infringements, particularly by recommending the use on optical discs of a source code enabling the identification of the origin of their manufacture

The external border Customs Regulation

- Council Regulation (EC) No 1383/2003 of 22 July 2003
- Sets out conditions under which customs authorities may intervene in cases where goods are suspected of infringing intellectual property rights.
- It also sets out the steps to be taken by the authorities when goods are found to be illegal.

Customs Regulation - How it works

- Allows right holders to apply directly to customs to prevent goods from circulating
- If application is admissible, customs suspend the release of the goods or detain them
- Applicant has ten days to apply to judicial instances for a substantive ruling. If no application is made, the customs release the goods
- Penalties when goods are found to be illegal can go as far as their destruction

Customs Regulation What is new or "TRIPs plus"

- Applies not only to imported goods but also to exports and to goods in transit
- Applies to new intellectual property rights: plant variety rights, geographical indications and designations of origin
- Improves the quality of information provided to customs by right-holders applying for action
- Harmonises period of validity and form of applications for action and encourages applicants to lodge them by computer

Customs Regulation

What is new

- Abolishes fees and securities to allow SMI/SMEs cost-free access to the mechanism. Right-holders must only provide an undertaking (declaration) in place of a security
- Extends the scope of the *ex officio* procedure to allow customs to act without a prior application for action
- Requires customs to provide right-holders with more detailed and ample information
- Allows right-holders to get samples for analysis in order to enable the procedure to continue

Customs Regulation What is new

- Reduces costs by giving right-holders the option of having fake goods destroyed with the agreement of the person holding or declaring the goods, without having to await the outcome of substantive legal proceedings
- No longer excludes from the scope of the regulation counterfeit or pirated goods in a traveler's personal baggage where such goods are suspected to be part of a larger-scale traffic.

IPR enforcement in the EU **The third countries**

- The multilateral dimension - TRIPs Agreement (WTO)

- Bilateral and Regional mechanisms
 - Free Trade Agreements
 - Association Agreements
 - Europe Agreements

IPR enforcement in third countries **The need to do something**

- Developed and developing WTO members are, since 2000, legally bound to respect minimum standards of IP protection
- Increase in piracy and counterfeiting in spite of efforts to introduce global minimum standards of IP protection
- The link between systemic IPR violations and organised crime is increasingly visible

IPR enforcement in third countries **The need to do something**

- A substantial share of pirated goods originates in our trading partners outside the Community
- The link between IPR enforcement and development policies. The difficulty to pass the message
- The sincere efforts by certain countries to address the problem. How can we help ?

The Enforcement Strategy

- Need to identify priorities, due to dimension of problem vs. the limitation of resources
 - Periodical assessment of situation in third countries (questionnaires, statistics, EU Delegations, etc.)
- Use of bilateral and multilateral mechanisms to achieve a better IP enforcement and fight against piracy
 - TRIPs Council and Bilateral Councils
 - Strengthening of enforcement element in bilateral FTAs

The Enforcement Strategy

- Use of mechanisms of incentive, like technical co-operation
 - Training programs, seminars, preparation of laws, capacity building
 - Inclusion of IPR enforcement in priority list for certain countries
- Use of sanction mechanisms
 - Dispute settlement (WTO, Bilateral Agreements)
 - Trade Barriers Regulation – Mechanism accessible to private entities. Their complaint triggers an investigation that may lead Commission to launch of a dispute settlement action

The Enforcement Strategy

- Political dialogue
 - Making clear to our partners the importance of IPR enforcement for the EU
 - Intensify co-operation with other countries concerned (developed and developing)
 - Important role of EU Delegations
- Awareness raising
 - Inform public of negative impact of IPR violations
 - Inform right-holders of how to address IPR violations
 - The Enforcement Guidebook

The Enforcement Strategy

- Public / private partnerships
 - Closer co-operation with the most active right-holders and associations
- Internal institutional structure
 - Improve co-ordination within the EU
 - Clarify roles for the public
 - Identify contact points
- For more details, see DG Trade's Enforcement page:
http://ec.europa.eu/comm/trade/issues/sectoral/intell_property/index_en.htm