



SUBJECT: WIPO Advisory Committee on Enforcement (ACE) DATE: April 9, 2008

PURPOSE: Information REFERENCE: EXCO/AU08/CET/1606

AUTHOR: Jason Cooper (US), CET 6 MEETING: ExCo Sydney

PURPOSE: For information MEETING DATE: April 13-17, 2008

Creation of the Advisory Committee on Enforcement (ACE)

In December 2001, the Joint Meeting of the Advisory Committee on Enforcement of Industrial Property Rights (ACE/IP) (Second Session) and the Advisory Committee on Management and Enforcement of Copyright and Related Rights in Global Information Networks (ACMEC) (Third Session) recommended that the World Intellectual Property Organization (WIPO) form a committee to continue the dialogue regarding the leading issues in the enforcement of all intellectual property rights. Subsequently, the WIPO General Assembly, during its session held from September – October 2002, voted to establish the Advisory Committee on Enforcement. (“ACE” or “the Committee”). The purpose of ACE is to manage global issues related to enforcement of intellectual property rights, including industrial property, copyright, and related rights.

Mandate and Objectives of ACE

Concurrent to the creation of ACE, WIPO adopted a Mandate and Objectives for ACE. WIPO pronounced that “[t]he mandate of the Committee in the field of enforcement, which excludes norm setting, was limited to technical assistance and coordination.” In regard to the focus of the Committee, WIPO resolved that the Committee should continue to further develop the work performed by previous Advisory Committees and that “[t]he Committee should focus on the following objectives: coordinating

with certain organizations and the private sector to combat counterfeiting and piracy activities; public education; assistance; coordination to undertake national and regional training programs for all relevant stakeholders and exchange of information on enforcement issues through the establishment of an Electronic Forum.”

Rules of Procedure for ACE

In the interest of consistency, the WIPO General Assembly adopted the WIPO General Rules of Procedure to govern the organization and procedure of ACE. These same rules also govern ACE/IP and governed the Joint Meeting of ACE/IP and ACMEC. Additionally, ACE adopted a rule that provided for a Chair and two Vice-Chairs who will each serve a one year term and will be eligible for re-election upon the conclusions of their terms.

Membership and Observers

The WIPO General Assembly also adopted the membership and observer rules from the WIPO General Rules of Procedure to govern membership and observer status in ACE. Thus, ACE may invite, as members, all Member States of WIPO, the Paris Union, and the Berne Union and, as observers, all Member States of the United Nations that are not members of WIPO, the Paris Union, or the Berne Union, as well as certain intergovernmental and nongovernmental



organizations that are accredited with observer status by WIPO. Additionally, WIPO encouraged Member States to consult with other agencies in their countries responsible for the enforcement of intellectual property rights and, if possible, to include representative of those agencies in their delegations at ACE meetings.

Accordingly, FICPI is eligible to receive an invitation to meetings of ACE and may attend the meetings as an observer because FICPI is officially admitted as an observer to WIPO.

First Session of the Advisory Committee on Enforcement

The First Session of ACE was held in Geneva from June 11 – 13, 2003. The representatives in attendance included representatives from 72 Member States, 5 intergovernmental organizations, and 16 nongovernmental organizations. The meeting focused on issues related to enforcement of intellectual property rights; coordination, training, and development of enforcement strategies; and the electronic exchange of information. The Committee also adopted the mandate for ACE as declared by WIPO and agreed in principle with the objectives for ACE as defined by WIPO.

The Committee extensively discussed enforcement issues that had been raised in past meetings of various WIPO committees. In the First Session of the Advisory Committee on Enforcement of Industrial Property Rights (ACE/IP) on October 19 – 20, 2000, the ACE/IP initiated four studies, three of which included: (1) Identifying difficulties in enforcement of industrial property in all Member States; (2) Identifying effective or best practices for enforcement of industrial property in Member States; and (3) Identifying existing requirements and needs for training and development of enforcement strategies in Member States. Member States and observers to that meeting were invited to provide information in response the studies. FICPI, as an observer, was one of 11 nongovernmental organizations that responded to the information request. The responses were compiled

and published for the Consultation Meeting on Enforcement held September 11-13, 2002. The documents were subsequently discussed at the First Session of ACE, and the Committee decided that the documents should serve as a source of information and as a setting for future work of the Committee.

The Committee also discussed the electronic exchange of information related to intellectual property enforcement issues. The Committee took note of the creation by WIPO of both the Enforcement and Special Projects Division and of the Electronic Forum on Intellectual Property Issues and Strategies (“the IPEIS Forum”). The Committee stated that the IPEIS Forum provides a superb vehicle for exchange of information related to enforcement of intellectual property rights. In using the IPEIS Forum as a tool for exchange of information, the Committee agreed, among other things, that participation in the Forum would no longer be restricted to Member States and observers of ACE, thereby engendering a broader discussion on enforcement issues.

The Committee also took note of the numerous WIPO expert missions, training visits, and seminars. Lastly, the Committee decided that the Second Session of ACE would focus on the role of the judiciary and quasi-judiciary authorities, as well as prosecutors, in relation to the enforcement of intellectual property rights.

Second Session of the Advisory Committee on Enforcement

The Second Session of ACE took place in Geneva from June 28 – 30, 2004. 173 representatives from 62 Member States, 3 intergovernmental organizations, and 13 nongovernmental organizations were in attendance. As agreed in the First Session of ACE, the topics at the Second Session were to encompass such themes as the roles of the judiciary, quasi-judiciary administrative authorities, and criminal prosecution in the enforcement of intellectual property rights.



Presentations were given by top judges and other senior governmental officials from various nations regarding the roles of the judiciary, quasi-judiciary authorities, and prosecutors in those countries. The presentations highlighted the role of the courts in the enforcement of intellectual property rights; the parallels between common law and civil legal systems; the value of administrative authorities and procedures in enforcement of intellectual property rights; and criminal procedures and sanctions pertaining to the infringement of intellectual property rights. The Committee also discussed specialization of the judiciary in regard to intellectual property issues, as well as the advantages and disadvantages that various countries have realized when establishing specialized courts.

Additionally, the Committee discussed methods for determining damages in the various legal systems. The cost of intellectual property litigation was also discussed and viewed by some to be a concern. Various remedies for high litigation costs were discussed, including the importance of efficient judiciary case management, the integration of judiciary and mediation procedures, and the streamlining of procedures within intellectual property litigation. Further, the Committee also took note of the numerous WIPO expert missions, training visits, and seminars, related to enforcement. Lastly, the Committee determined that the Third Session would focus on awareness and education, including training, in regard to all areas of enforcement.

Third Session of the Advisory Committee on Enforcement

The Third Session of ACE was held in Geneva from May 15 – 17, 2006. The representatives in attendance included 140 representatives from 57 Member States, 6 intergovernmental organizations, and 18 nongovernmental organizations. As determined at the Second Session, the focus of the Third Session included awareness-building and education, including training, related to all areas of enforcement of

intellectual property rights, with particular attention on areas in which Member States have requested assistance.

Presentations were given by numerous government experts, as well as representatives of the music and trademark industries. The presentations dealt specifically with the extent of piracy and counterfeiting in various countries; the enforcement strategies and efforts employed by the developing nations to curb such illegal activities; the difficulties of developing nations regarding health and safety products; the importance of training and public outreach programs; the expansion of extensive national guidelines in combating piracy; the necessity in providing foreign investors with confidence in the rule of law; the requirement that nations establish institutional organizations to combat counterfeiting and piracy before receiving global assistance; and the advisability of an officially adopted holistic strategy in regard to enforcement matters. Additionally, one speaker categorized the four primary areas in the war against piracy and counterfeiting as repressive, educational, economic, and institutional actions. The Committee once again noted the numerous WIPO expert missions, training visits, and seminars. In regard to future work, the Committee decided that Fourth Session should contemplate an exchange of views on the cooperation and coordination of enforcement efforts at the national, regional, and international levels.

Fourth Session of the Advisory Committee on Enforcement

The Fourth Session of ACE was held in Geneva from November 1 – 2, 2007. The representatives in attendance included representatives from Member States, intergovernmental organizations, and nongovernmental organizations. As always, the Committee again noted the numerous WIPO expert missions, training visits, seminars, and other activities. In particular, the Committee highlighted the Third Global



Congress on Combating Counterfeiting and Piracy and the release of a WIPO case book regarding enforcement of intellectual property rights.

The Fourth Session focused on the coordination and cooperation of enforcement activities at the national, regional, and international levels. The presentations given covered the importance of cooperation and coordination between law enforcement agencies; the need for holders of intellectual property rights to cooperate in a strategic approach with law enforcement; the magnitude of global piracy and counterfeiting, including the trade of such goods via the Internet; counterfeit medical products the accompanying health and safety risks; and the significance of the enforcement of intellectual property rights in developing nations. Additionally, the presentations highlighted that intellectual property crimes are frequently associated with cross-border criminal activity, and therefore, the streamlining of criminal enforcement efforts can greatly increase the effectiveness of criminal intellectual property right enforcement.

Suggestions were offered in regard to the future work of the Committee, including bio-piracy; the contribution by intellectual property rights holders in support of enforcement; piracy of genetic resources; cooperation and coordination regarding intellectual property crimes perpetrated via the Internet; and private sector participation in enforcement. The Committee did not agree on a theme for the Fifth Session, and the Committee requested proposals on the topic by February 2008. The dates for the Fifth Session have not yet been announced.