



REPORT OF DISCUSSIONS

G8 Intellectual Property Experts Group Meeting

The members of the G8 Intellectual Property Experts Group (IPEG) convened at the Ministry of Foreign Affairs in Rome on 2-4 February and 27-28 April, to discuss and develop strategies and measures for improving the Intellectual Property system.

In consideration of the complexity of commitments in the customs field, as outlined at the Hokkaido Toyako Summit in 2008, the Presidency decided to form an Intellectual Property-Customs Subgroup. This convened in Rome on the same dates, working in full coordination with the Intellectual Property Experts Group.

The results of the discussions, which will be reported to the G8 leaders through the Sherpas, are set out below.

Introduction

Promoting and protecting innovation via an efficient system of Intellectual Property rights has become an essential factor for the sustainable development of the world economy.

The exponential growth in the exploitation of Intellectual Property rights at the trans-national level and the surge of Information and Communication Technology (ICT) have made Intellectual Property a key component in sectors as diverse as trade, industrial policy, public health, consumer safety, environmental protection, and the Internet. Also in consideration of the growing number of international fora where IP issues are discussed, the IPEG acknowledges the central role that the World Intellectual Property



Organisation (WIPO) plays in fostering an integral vision and coherent development of the international IP system.

An Intellectual Property agenda for the 21st century should reflect on the functioning of national regimes and on international patent collaboration, as well as on enforcement mechanisms targeted against counterfeiting and piracy on a global scale, which continue to pose a grave threat to the global economy, health and welfare.

In this framework, an in-depth reflection on the impact of the Internet and new technologies on the spread of IP rights infringements seems both inevitable and necessary. This will also be an important element of the strategies to ensure that Information and Communication Technology fully serves the goal of fostering innovation and creating sustainable economic growth and prosperity.

Heiligendamm Dialogue Process on Promoting and Protecting Innovation

At the Heiligendamm Summit in 2007, leaders took the initiative to start a new G8 and G5 partnership, the Heiligendamm Dialogue Process, articulated in 4 pillars (Development and Africa, Investment, Innovation and Energy Efficiency).

We recognize the important contribution that the Heiligendamm Dialogue Process has made to building a common understanding on the priorities of partner countries, on the socio-economic aspects of Intellectual Property, and on ways to increase the efficiency of the international system to the benefit of all.

The Dialogue has reinforced a common understanding of partner countries that an enabling policy and business environment where IP rights are respected is necessary to promote innovation, knowledge, entrepreneurship and creativity.

Combating Counterfeiting and Piracy

The IPEG strongly welcomes initiatives to negotiate bilateral, multilateral and plurilateral instruments, such as the Anti-Counterfeiting Trade Agreement (ACTA), aimed at increasing international cooperation,



strengthening the framework of practices that contribute to effective enforcement of IP rights, and strengthening relevant enforcement measures.

OECD Study on the Economic Impact of Counterfeiting and Piracy

Innovation processes are increasingly threatened by Intellectual Property rights violations, while the initiatives taken by governments and business to fight counterfeiting and piracy have been hampered by the magnitude of the phenomena, the clandestine nature of related activities and the consequent difficulty of developing quantitative and statistical models.

In this framework, the on-going OECD Study on the Economic Impact of Counterfeiting and Piracy is a valuable tool. Phase I (on counterfeiting and piracy of tangible products) and Phase II (on digital piracy) of the Study have provided us with an important foundation for work on the issue.

The IPEG encourages governments and businesses to provide their input to the ongoing work of the OECD as it further examines the Economic Impact of Counterfeiting and Piracy in Phase III.

Okinawa Charter commitment on Use of Software in full compliance with Intellectual Property Rights

Governments have a special duty to set an example in the fight against counterfeiting and piracy. In line with this view, at the Hokkaido Toyako Summit in 2008 leaders agreed to reaffirm the Okinawa Charter commitment to ensure that governments use software in full compliance with Intellectual Property rights protection.

The IPEG has elaborated and approved the attached set of guidelines (**ATT. 1**) to contribute to reducing the risk of public networks being used to infringe IP rights.

Sharing of Successful Experience Linking IP and Business (E-speed)

G8 members and WIPO have shared the idea of a web-based database for experience-sharing on the use of Intellectual Property for economic



development and suggested that deliberations continue in the appropriate fora. Recognizing the importance of sharing successful experiences in linking IP and business with developing countries as a development tool, we encourage WIPO to further elaborate the idea in cooperation with G8 members.

Global patent harmonization and international patent collaboration

The number of worldwide patent filings has been steadily increasing and in 2006 reached 1.76 million, a 5% increase on the previous year. The number of patents granted reached 727,000, an 18.2% increase on the previous year, due to an increase in the number of patents granted by some offices and a growing general effort to reduce the backlog.

Although the current economic crisis may temporarily affect the number of patent filings, the substantial backlog, the heavy administrative burden of the patent process and the need to ensure efficient and predictable conditions to economic actors operating on global markets underline the importance of harmonizing the patent system worldwide.

In this framework, we reaffirm the vital importance of the Patent Cooperation Treaty (PCT) and of accelerating discussions related to Substantive Patent Law Treaty (SPLT) and take note of our discussion about incentives for such acceleration. We also acknowledge the expansion of patent collaboration, including work-sharing initiatives such as the Patent Prosecution Highway (PPH) to contribute to technological innovation and economic development by ensuring a high-quality, expeditious, and cost-effective examination process.

Strengthening of bilateral cooperation among G8 customs authorities

As part of the commitments undertaken at the Hokkaido Toyako Summit in 2008 (“we will advance existing anti-counterfeiting and piracy initiatives through, *inter alia*, promoting information exchange systems amongst our authorities”) the IP-Customs Subgroup has drawn up a “G8 Model Arrangement for Bilateral Information Sharing for Fighting Counterfeiting and Piracy” and a diagram showing the network of bilateral agreements

(ATT. 2), aimed at facilitating the exchange of information on identifying high-risk cargoes containing products infringing Intellectual Property rights.

The IPEG welcomes the intensive efforts made by the IP-Customs Subgroup for the model arrangement, which could be widely used also by other countries. The IP-Customs Subgroup noted with satisfaction the recent conclusion of the bilateral customs cooperation agreement between Japan and Russia and the advanced state of progress in the recently opened negotiations on a bilateral customs cooperation agreement between Japan and Italy.

Strengthening of multilateral cooperation among G8 customs authorities

In the framework of the commitments on information exchange systems undertaken at the Hokkaido Toyako Summit in 2008, at the multilateral level the IP-Customs Subgroup has opened stage II of the INFO-IPR pilot project. This stage builds upon the first stage and is designed to further test the use of a system for exchanging information between G8 countries' customs authorities using the World Customs Organization's CEN-COMM IT platform. The ALERT system, designed specifically for the exchange of information on counterfeit goods that pose a risk to public health, safety and security (counterfeit drugs and food, toys, cosmetic products, spare parts, critical infrastructure and defence system components, etc) is also included in the trial. Based on the results of stage II, which ends in July 2009, the future launch of the system will be evaluated.

The further planned measure in the multilateral sector - supporting the development of non-binding Standards to be Employed by Customs for Uniform Rights Enforcement (SECURE) - has been suspended as a result of the on-going redefinition of some aspects of the WCO's IPR work. However, also considering the fact that a number of developing countries continue to request WCO Intellectual Property rights capacity building, the Customs Subgroup of the IPEG reaffirmed the importance of IP-related activities undertaken by WCO.

The WCO reported on the progress of capacity building activities to the IP-Customs Subgroup and to the IPEG.



G8 technical assistance pilot plans

At Heiligendamm, leaders endorsed the "Guidelines for Technical Assistance on IP rights protection to interested developing countries" and agreed to the launch of three technical assistance pilot plans: by Japan in South Africa, United States in Indonesia and United Kingdom in the tri-border region of Argentina, Brazil and Paraguay. The IPEG welcomes the progress of those plans and the launch of new ones by France in Morocco, Germany in Jordan and United States in Nigeria.

Internet and Digital Piracy

Internet and the new technologies have dramatically impacted on the worldwide diffusion of digital piracy, with radical effects on the music, movie and software industries, and ultimately on the fundamental connotations of copyright and creativity as a whole.

In the framework of the objective of ensuring protection and enforcement of Intellectual Property rights, the IPEG has started a reflection on the various measures against digital piracy adopted or under consideration by G8 members. These include current and proposed legislation, government-sponsored negotiations, codes of practice or industry agreements. The reflection also considers the possible role of international cooperation.

In response to widespread infringement in the digital environment, the IPEG agreed that the G8 should, at a minimum, call upon its members and the global community to continue discussing, in the appropriate fora, effective ways to combat digital piracy on the Internet and to advance the protection and enforcement of Intellectual Property rights, including establishing legal liability in the digital environment. These discussions should take into account the rights of the individual (for example, the right to privacy).



G8 Guidelines for Governments Use of Software in Compliance with Intellectual Property Rights

Responding to advances in Information and Communications Technology, the G8 leaders at the 2000 Kyushu-Okinawa Summit adopted the Okinawa Charter on Global Information Society, which calls for governments to use software in full compliance with Intellectual Property rights protection. At the 2008 Hokkaido-Toyako Summit, the G8 leaders renewed this commitment, and called upon other countries to follow it.

Since Okinawa, technological developments – including the advent of peer-to-peer file sharing – have posed new challenges and concerns.

Governmental networks constitute a significant portion of Information Technology (IT) and Internet resources, and are thus exposed to the risks and problems associated with Intellectual Property infringement.

By reaffirming the commitments made in the Okinawa Charter, and ensuring that laws, regulations, and policies are in place to reduce the risk that public computing resources are used to infringe IP rights, governments can set an example for the private sector and for IT users in the fight against counterfeiting and piracy, and, at the same time, safeguard the interests of security and transparency of their own administrations.

In line with this view, the Intellectual Property Expert Group developed the following set of guidelines as an instrument to improve the protection of IP rights within public administrations.

Guidelines

Software Products

Governments shall not violate Intellectual Property rights in the acquisition and deployment of software, and will establish the necessary

measures to ensure the fulfilment of this commitment. The competent authorities should take measures to verify that computers employed by public administrations be exclusively provided with legitimate software.

Use of Government Computer Networks

The competent authorities should establish the necessary measures to ensure that the use of government computer networks, including, for example, those operated by contractors, does not violate Intellectual Property rights.

Information and Awareness

Public administrations should undertake campaigns and/or informational initiatives to raise employees' awareness about the importance of Intellectual Property rights for innovation and the development of new products, with a view to encouraging the appropriate use of Information Technology.

Public employees should be informed about network operating rules and procedures and the consequences of the illegal or improper use of public computer systems.

Public-Private Sector Collaboration

Aware of the crucial importance of public procurement in fostering innovation in the software industry, governments may collaborate with the private sector and other stakeholders to share best practices related to the legitimate acquisition and use of software.



G8 Model Arrangement on Bilateral Information Sharing for Fighting Counterfeiting and Piracy



INTRODUCTION

Background

The G8 Intellectual Property Experts' Group (G8 IPEG) had reported several projects to the G8 Hokkaido Toyako Summit, including the project proposal "Increase Co-operation and Coordination among National Customs and Border Enforcement Administrations". This project includes, among others, the elaboration of a model guideline on bilateral information exchange.

Bilateral sharing of data related to specific traders will enable G8 members to identify high-risk cargo consisting of goods infringing Intellectual Property rights. Mindful that such information sharing requires a legal framework in accordance with the legal constraints posed by the national laws of each G8 member, customs and border enforcement authorities of the G8 will, where appropriate, complete Customs Mutual Assistance Agreements (CMAAs) to establish such a legal framework for bilateral information exchange. These agreements will enable the exchange of detailed information for specific enforcement purposes that would otherwise be prohibited from disclosure. Moreover, as these agreements provide for bilateral sharing of information on a customs or border enforcement authority's own initiative, G8 members are also urged to develop information exchange networks with each other to facilitate such information sharing. CMAAs and bilateral information exchange networks will further facilitate the sharing of such detailed information. In addition, G8 members recognize that detailed arrangements to be concluded under the CMAAs may promote information exchange and a model arrangement may help members to elaborate such arrangements.

In line with the above commitment, the following G8 Model Arrangement on Bilateral Information Sharing for Fighting Counterfeiting and Piracy has been elaborated.

Model Arrangement

The G8 Model Arrangement on Bilateral Information Sharing for Fighting Counterfeiting and Piracy will not oblige G8 members to modify their domestic legislations/regulations and all provisions of the model arrangement are subject to national legislations of members. In cases where provisions in the model arrangement contradict existing CMAAs, the contradiction will not affect the validity of the CMAAs.

The purpose of the model arrangement is to support and facilitate bilateral information exchange among G8 members, by showing referential provisions of an arrangement for information exchange on infringing goods which is concluded under the CMAA. In cases where G8 members have already concluded their CMAAs with other G8 members, they may conclude arrangements to implement the CMAAs relative to information exchange on infringing goods by adopting advantageous provisions, modifying the provisions and introducing provisions that go beyond this model arrangement.

Notwithstanding the approval of the model arrangement, G8 members who have not concluded a CMAA with all of the other members are encouraged to make every possible effort to conclude the CMAA.

This model arrangement may be modified through a consensus by the Customs Authorities of G8 members.

TEXT OF THE MODEL ARRANGEMENT

Section 1: Definition

1. For the purpose of this model arrangement,
 - (a) “information” means nominal or non-nominal information that is directly or indirectly associated with a specific natural person, legal person, shipment or case;
 - (b) “infringing goods” means goods infringing intellectual property
 - (c) “requesting member” means a member who has requested the other member to provide information;
 - (d) “requested member” means a member who has been requested to provide information to a requesting member.

Section 2: Information Exchange (Request Basis)

1. A member may request the other member to provide information. The request should be made through a written document indicating the enforcement purpose and reason for the request.
2. The written request described in paragraph 1 of this section should have sufficient information for the requested member to identify and retrieve the information necessary to complete the request. Where the written request does not have sufficient information, the requested member may ask the requesting member to provide supplementary information.
3. Where the requested member is unable to provide the requested information according to its domestic legislations/regulations, the requested member should notify the requesting member of this without delay.
4. The requesting member is prohibited from using the information provided in accordance with this section for any purpose other than the enforcement purpose indicated on the request. In order to use the information for other purposes, the requesting member shall obtain prior written permission from the requested member.

5. The requested member may ask the requesting member to provide the progress or results of enforcement related to the provided information. Where the requesting member receives such a request, the requesting member should respond to it in an appropriate manner to the extent possible.

Section 3: Information Exchange (Spontaneous Basis)

1. Notwithstanding Section 2 above, a member may provide information that is helpful for identifying infringing goods without a request from the other member.

2. In cases where a member suspends importation of infringing goods of which the port of departure is the country of the other member and where the suspension meets any of the following conditions, the importing member may provide the exporting member with information about the exporter/consignor of the suspended goods:

- (a) Cases where the exporter/consignor located in the country of the other member is considered to have tried to export infringing goods with frequency;
- (b) Cases where the members suspended more than 1000 items in the case of general cargo, or 100 items in the case of postal items on which importation in a single shipment was attempted;
- (c) Any other cases that are deemed to be particularly egregious.

3. The information provided by the member under paragraph 2 of this section should, where possible, be as follows: (This should not apply to cases where the information is not available from the declaration and attached documents or other related documents.)

< General cargo >

- (a) Name of exporter or consignor
- (b) Address of exporter or consignor
- (c) Telephone number of exporter or consignor
- (d) Name of export port or airport
- (e) Name of import port, airport or customs office of importation

- (f) Description of the commodity
- (g) Type and name of infringed intellectual property
- (h) Quantity of the suspended goods
- (i) Container number and B/L number
- (j) Date of arrival/entry
- (k) Date of suspension
- (l) Vessel's name or flight number
- (m) Other information relating to enforcement

< Postal items >

- (a) Name of sender
- (b) Address of sender
- (c) Telephone number of sender
- (d) Postal number (e.g. EMS number)
- (e) Date of suspension
- (f) Other information relating to the enforcement

4. In cases where a member suspends export of infringing goods of which the destination is the country of the other member or suspends the transit of infringing goods which are to transit to the country of the other member, paragraphs 2 and 3 of this section may be applied *mutatis mutandis*.

5. In cases where a member has detected goods threatening health, safety and security in its border enforcement procedures, the member should, where possible, notify the other member and provide information related to the goods without delay.

6. The information in paragraph 5 of this section should include photographs of the goods or other information describing the appearance of the goods. Members may include information prescribed in paragraph 3 of this section in accordance with its national legislations/regulations.

7. A member is prohibited from using the information provided by the other member in accordance with this section for any purpose other than enforcement of intellectual property rights encountered at the border. In order to use the information for other purposes, the member shall obtain prior written permission from the member who provided the information.






Section 4: Protection of Information

1. Members shall maintain the confidentiality, protection and appropriate use of any information provided by the other member under the sections 2 and 3.
2. The member receiving information shall provide the same level of protection in respect of confidentiality as applies to the same kind of information in its own territory.

Section 5: Procedures for information exchange

1. The information described in the section 2 and 3 should be exchanged through the contact points designated by the members.
2. The information should, where possible, be exchanged electronically and members should make every effort to exchange the information in a secure manner.

Development of bilateral networks among G8 members

-  Bilateral agreement
-  Negotiating process
-  EC Regulation
-  Agreement with EC

