

PARIS OUTCOMES STATEMENT

*Sixth Global Congress on Combating Counterfeiting and Piracy
Paris, France
2-3 February 2011*

Overview

The Sixth Global Congress on Combating Counterfeiting and Piracy, under the High Patronage of Mr. Nicolas Sarkozy, the President of the French Republic, was hosted by France's Industrial Property Office (INPI) and chaired by the World Intellectual Property Organization (WIPO). The Congress was co-organized by INPI, WIPO, INTERPOL and the World Customs Organization (WCO), in co-operation with the world's business community represented by the International Chamber of Commerce (ICC) through its BASCAP (Business Action to Stop Counterfeiting and Piracy) initiative, and the International Trademark Association (INTA).

The Congress attracted almost 900 delegates from intergovernmental organizations, national governments, enforcement agencies and business from 105 countries to address the "overlapping social, economic and political dimensions of counterfeiting and piracy, and the need for targeted, integrated responses from a variety of actors" as WIPO Director General Francis Gurry said in his opening remarks.

In the course of the plenary and boardroom dialogue sessions, speakers and participants intensely discussed different subject matters around the theme "Building respect for IP: sustainable solutions to a global problem". Several dynamic suggestions and proposals were made on how to find sustainable solutions that take into account variable levels of socio-economic development including the role of law enforcement agencies and right holders in fighting counterfeiting and piracy.

Plenary and boardroom dialogue sessions

The following provides a summary of the key statements and proposals presented by individual moderators, panelists and Congress participants in the various sessions¹.

Building respect for IP

- Intangible assets embodied in intellectual property rights are major assets in many economies today. There still is a great need to convey the message on the value of human creativity to society and economy, along with the critical need to protect it.
- Counterfeiting and piracy continue to grow as a social and economic problem – with wide-ranging negative impacts on consumers, governments, the economy, employment, health and safety.

¹ Podcasts of the sessions are available on the Global Congress website at www.ccapcongress.net/.

- Public-private cooperation is key to providing an effective response to counterfeiting and piracy, to keep pace with the constant changes in technology and business models, and to maximize benefit from the great diversity of expertise found in public and private approaches and programs.
- Counterfeiting and piracy are not north-south problems. They are prevalent in all countries, and are producing their harmful effects globally.
- IP may not necessarily be the highest priority for governments. This perception is changing with a better understanding of the proliferation of fake products across all industry sectors, and especially including products which cause direct harm to consumers, such as counterfeit pharmaceuticals and auto parts; a better understanding of the negative impacts of counterfeiting and piracy on the economy and employment; and with the urgent need for encouraging innovation to respond to today's global challenges (e.g., climate change, food security).
- There is a continuing need for further consumer education and training of law enforcement officials. The Congress explored innovative tools being developed by the Global Congress partners, including the INTERPOL International IP Crime Investigators College (IIPCIC), an interactive on-line IP crime training facility, and the WCO Interface Public Members (IPM), a tool for in-service training of frontline Customs officers to facilitate the identification of counterfeits.

Creating and refining the means for efficient enforcement

- Stronger and better inter-agency coordination, and cooperation between public and private sector, remain crucial to further improve the efficiency of IP rights enforcement. Such cooperation has to be built on three key elements to have sustainable effects, namely trust, liability, transparency.
- There is a need for further engagement in improving communication between the public and the private sector, and IPM is a response from the WCO to this need.
- Continuing awareness-raising for all stakeholders involved is key. In addition to educating consumers, more emphasis should be put on campaigns directed at supporting the efforts of law enforcement authorities.

The importance of measuring the scope and impact of infringement

- There is a great need for an evidence-based understanding of the economic impact of counterfeiting and piracy. Especially in times of scarce government resources, such understanding would be a valuable basis for dedicating resources to IP enforcement.
- There are great efforts in the public and private sector aiming to establish industry-specific and economic-wide effects of counterfeiting and piracy.
- Existing studies indicate that the magnitude of counterfeiting and piracy is a significant and growing problem, while acknowledging that further research is needed.
- Suggested roadmap for further research:
 - Ongoing improvement of methodologies for evaluating the socio-economic impacts of counterfeiting and piracy;
 - Improve availability and transparency of data;
 - Deeper analysis of counterfeiting and piracy impacts at national levels (e.g. impacts on government tax revenues and government expenditures on law enforcement and health

care), on specific industries, and on relations to economic growth and development, such as investment in R&D, trade, and FDI.

Protecting consumer safety – a critical driver to fight counterfeiting

- Generally, the fight against counterfeit products is not only an IP but also a health and safety issue. Counterfeit products such as counterfeit medicines (“*tueurs silencieux*”), toys and health products affect and endanger our daily lives.
- Consumers must be better informed about negative and sometimes even life-endangering effects of counterfeit products.
- A global, coordinated and vigorous engagement of all parties (public and private) involved is needed to improve the protection of consumers.
- Both civil and criminal enforcement should be used to effectively protect consumers.

French Anti-counterfeiting Mechanism and French Strategy for International Cooperation

- There is an increasing synergy between public and private sector players with encouraging results. One example is the *Charte Sirinelli*, a successful “soft law” model for public-private cooperation.
- Consumer education remains a key pillar in French anti-counterfeiting strategies.
- There is a need for constant update and development of anti-counterfeiting strategies to respond to rapidly changing infringing activities and distribution patterns.
- Roadmap for action: To explore public-private cooperation models with other intermediaries (e.g., pay services; transportation sector); and to encourage greater engagement of consumer associations in the anti-counterfeiting process.
- French international cooperation in the field of anti-counterfeiting is open (beneficial to French public and private sectors), balanced (non-binding and binding instruments), flexible (bilateral, regional or multilateral levels) concrete and measurable (INPI Experts; technical assistants of the Observatory on Illicit Trafficking in countries with which France has entered into international cooperation), collaborative (all participating countries must share the same vision and objectives) and it can also be specific when required (e.g., the Observatory on Illicit Trafficking focuses on combating health-related counterfeit products).
- The cooperation between IPR agencies of different countries shall be, as far as possible, on a voluntary basis. The cooperation engaged by the Moroccan Industrial and Commercial Property Office (OMPIC) in the Euro-Mediterranean zone, launched in 2008 and aiming at the further development of, and a closer cooperation between, the respective national anti-counterfeiting committees (*Déclaration de Cannes*) is a good example of successful regional cooperation.
- Relying partly on soft law (e.g., resolutions, guidelines, bilateral agreements) to strengthen the framework of best practices that contribute to effective enforcement shall be encouraged. Soft law can be the beginning of a gradual process which may result in binding rules for States.

Creating a better balance: the role of competition law

- Considerable overlap between the objectives of IP rights on the one hand, and competition law on the other: both aim at promoting innovation and economic growth.

- There is a risk that IP rights be used in an uncompetitive way for strategic reasons; e.g. by abusing IP enforcement measures in order to eliminate market entrants.
- IP rights should not only benefit IP right holders but should also contribute to the well-being of society. This balance could be improved through more effective competition policies.
- The lack of an international legal framework for competition law could be viewed as a weakness of competition law as a tool for balancing anti-competitive IP legislation.

IP enforcement and sustainable development – perspectives and challenges

- IP rights should be enforced in ways that promote social and economic development.
- “Out of the box thinking”, taking account of the various perspectives of the different stakeholders involved, is needed to find creative and valuable approaches of building respect for IP.
- Recent case studies show that IP-related research and development in developing countries can potentially be stimulated by international development projects.
- There is a strong need for empirical evidence to further define the role of IP rights for sustainable development.

Addressing counterfeiting and piracy in the virtual world

- The matter should be approached in the broader context of creating an (online) environment within which the rule of law is respected. In that sense, concerns by consumers over privacy issues and freedom of speech in the context of enforcement against online piracy and counterfeiting need to be taken seriously, including through better communication.
- Current trends in online piracy and counterfeiting:
 - Constant rapid technological developments such as a shift from using peer to peer exchange to, *inter alia*, direct downloading and streaming;
 - Counterfeiters and pirates establish legitimate looking websites to sell counterfeit and pirated goods;
 - Counterfeiters are exploiting shortcomings/weaknesses of IP enforcement across jurisdictions to escape authorities.
- It is a permanent challenge for enforcement authorities to acquire and maintain the necessary technological expertise.
- Tracking and identifying infringers remain difficult, especially across jurisdictions since registration details of the owners of websites and domain names are often incorrect.
- There has been much progress by governments, trademark owners, Internet service providers (ISPs), and other stakeholders to address the issue. Case studies featured in the session included:
 - Examples of increasingly sophisticated cooperation between governments and industries to track infringers and between payment service providers, ISPs and trademark owners to establish monitoring and take down mechanisms and establishment of best practices;
 - Seizures of domain names as an effective and dissuasive model in the US.

Financing effective enforcement – innovative approaches

- There is a need to maximize resources in times of financial constraints. Seizure of profits can be an effective deterrent and disincentive to counterfeit crime in some countries and allocated to funding law enforcement (e.g., Proceeds of Crime Act in the UK; similar concepts in US, South Africa and Australia).
- Effective inter-agency communication and cooperation are essential to pool expertise and share information, e.g. through online networks that bring together experts from various departments involved in investigating IP crime.
- Program/operation planning: careful targeting is key to achieve maximum effectiveness.
- Building trust through transparent and reliable partnerships as a basis for long-term and sustainable cooperation.
- Continue investing in capacity building; trained enforcement officials are well equipped to prevent and address “safe havens”.
- Public-private cooperation in police investigations: It is important to bear in mind potential conflicts of interest. This requires careful analysis of appropriate ways and means of cooperation, e.g., cooperation with cross-industry representative bodies rather than with individual companies.

The cost of cleaning up

- Currently, right holders often bear the costs for storage and destruction of counterfeit and pirated goods while others (infringers as well as some intermediaries) go on to maximize profit by producing or knowingly transporting counterfeit and pirated goods. To address this problem the roles of the individual players in the supply chain should be fully understood.
- It seems that the current legal framework does not sufficiently take into consideration all relevant stakeholders involved in the supply chain.
- A possible way forward to reduce the burden of cost imposed on right holders might be the further development of legal frameworks. Such development should not only focus on IP law, but also embrace other legal fields, such as the law of contracts.
- In addition, stronger cooperation between right holders and intermediaries will most likely facilitate the tracing of an infringer, including opportunities for cost recovery.

Responsible destruction – eco-friendly and socially equitable disposal of infringing goods

- The problem of disposing goods in a responsible manner is not limited to counterfeit and pirated goods, but an issue that arises in many different circumstances and must therefore be seen in a wider context.
- In line with the flexibilities permitted under the international legal framework, including the TRIPS Agreement, there are alternatives to the destruction of counterfeit products, such as recycling and donation.
- However, recycling as well as releasing counterfeit products to charities might undermine brand prestige and goodwill.

- Good cooperation between right holders and customs administrations is needed to ensure a secure process. Right holders do not want to prevent counterfeit/pirated goods being used for purposes that can benefit society when necessary. However, in cases of donation, “they also do not want to deliver bad products to good people”.

Corporate social responsibility – nurturing respect for IP

- The panel supported WIPO’s initiative to further explore the potential of CSR in the context of creating an environment within which to respect IP rights.
- Foreign investment is to be seen in the broader context of respecting the rule of law. In this sense, creating an environment in which property (including IP) is protected can have positive effects on investment.
- Addressing counterfeiting and piracy requires thinking beyond IP enforcement as such. It should be a long-term investment aiming at long-term partnerships in which a company becomes “a citizen” of the local community. In this regard, CSR can be an important tool to build mutual trust and respect.
- Sustainable anti-counterfeiting approaches require an understanding of the impact of enforcement action in a broader sense, linking enforcement to a country’s long term development goals.
- Enforcement officials need to understand reasons and socio-economic benefits of protecting IP, rather than merely applying the law.
- Consumer awareness remains crucial. In that context, greater commitment by consumer associations and groups would be desirable.

Government agreements and initiatives

- The example of EU-China cooperation and technical assistance to Chinese legislative, judicial, administrative and enforcement institutions was introduced.
- Plurilateral agreements such as the Anti-Counterfeiting Trade Agreement (ACTA) were discussed. Different views were offered as to whether ACTA would ensure sufficient balance, including with a view to flexibilities for developing countries guaranteed under the TRIPS Agreement.
- Some panelists pointed out that each country had sovereignty to sign agreements that go beyond the minimum standards of the TRIPS Agreement (“TRIPS is not the ceiling but rather the floor”). It was also stressed that ACTA was an agreement meant to address counterfeiting and piracy, not hinder legitimate trade.
- Discussions further addressed the negotiation process as such, especially with a view to the issue of transparency. Panelists expressed differing views in that respect.
- Some panelists addressed the potential impact of ACTA on non-signatory countries, expressing that ACTA was “a plurilateral agreement having a multilateral impact”.

The power of education and awareness in building respect for IP

- The panel emphasized that consumer education is key; and how to explain the value of IP in a way that resonates with the public is a constant challenge.

- Awareness raising approaches are constantly evolving. Different approaches are being adopted by different sectors, as one size does not fit all.
- The IP enforcement community needs to lead by example and to activate its own base.
- Messages need to resonate with different audiences. To that aim, all means available (including social networking tools) have to be used to communicate anti-counterfeiting messages.
- Tremendous challenges remain and there is a continued need to work together. At the same time, there is room for optimism. Case studies show success in communicating facts in a compelling way, including *vis-à-vis* the young generation.

Securing the supply chain – understanding the customer

- There are several reasons as to why infringing goods can infiltrate officially established supply chains thus underscoring the role and responsibilities of intermediaries.
- Free Trade Agreements: There is a need to strike the appropriate balance between free trade and the control of the supply chain / distribution points.
- All stakeholders share the responsibility of securing the supply chain.
- Governments have to be aware of their responsibility in this regard including the obligation to establish sufficient legislative frameworks to secure the supply chain.

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