

World Intellectual Property Organization Daily Report from Geneva - Jan 31

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Anne Jensen of the Stockholm Network represented the Federalist Society at Day 2 of WIPO's Global Congress on Counterfeiting and Piracy. What follows is her daily report for Wednesday, January 31.

Capacity Building

The Honorable Justice L.T. Harms, Judge on the Supreme Court of Appeal of South Africa, delivered a keynote address stressing the need for a coherent economic strategy to counteract piracy. "The strategy must include all political levels, including top levels," Harms argued. Strong political will is essential for this.

Improvements in Brazil are testimony to the necessity of political will in the battle for intellectual property rights. The address of Mr. Andre Barcellos, Executive Secretary of Brazil's National Council on Combating Piracy, was proof of this. He noted that great improvements are being made in his country due to increased political will to tackle the problem. Unfortunately, Brazil's enthusiasm for intellectual property rights is unique, and the necessary levels of political will are difficult to find today.

Commenting on the keynote addresses was a panel of distinguished speakers from WIPO, Microsoft, George Washington University and the International Bar Association. Ms. Louise Van Greunen, Deputy Director of the Enforcement and Special Projects Division at WIPO, outlined some of the many capacity-building projects her division has developed over the past few years. These projects focus on two main areas. First, WIPO uses public education as its main tool in building capacity. These educational programs involve everything from practical training sessions to information exchange, and they work with both the public and the private sector. Second, WIPO, and the enforcement division in particular, offers legislative assistance to countries, aiding them in evaluating their national laws in light of international obligations.

Following up on Ms. Van Greunen's comments, Alexander Birnstiel, Secretary of the IP and Entertainment Law Committee of the International Bar Association, also commented on how his organization is involved in helping countries develop legislative and enforcement strategies.

These strategies are based on best practice, and the EU Enforcement Directive is often used as a model.

Mr. Mike Ryan, Professor and Director of the Creative and Innovative Economy Center at George Washington University Law School, highlighted the necessity of educating the general public on how the goal of intellectual property rights is not one of securing additional income for already wealthy multinationals. A solid IP regime is an integral part of any economic development plan. As an example, Professor Ryan held up King Abdullah of Jordan, noting how he is now reaping significant benefits from his decision to implement such a strategy.

Mr. David Finn, Associate General Counsel of Microsoft's Worldwide Anti-Piracy and Anti-Counterfeiting in France, concluded the panel on a positive note, stressing how the IT sector is experiencing huge improvements in regards to piracy. The rate of software piracy is falling, and it is anticipated that it will continue to fall even farther in the years to come.

Raising Awareness

The first to speak on this topic was Mr. Christopher Stewart, Global Brand Manager for The Gallup Organization (USA). Stewart's organization recently conducted a survey which attempted to better understand the attitudes of consumers of pirated goods. The results were very interesting. First, the Gallup Organization established that in some countries, close to 40% of respondents had purchased counterfeited goods within the past 12 months. Surprisingly, these numbers did not include respondents from China or those who had participated in illegal internet downloading. The survey also found that, apart from music and DVDs, the pirated products in greatest demand are branded goods, such as handbags and shoes. There are also great differences between the counterfeited products sought after in developed countries versus those that are popular in the developing world. Developing countries have a clear demand for what Mr. Stewart referred to as "feel-good" products, such as make-up, perfume and other luxury items. In the developed world, however, music and films are most popular. When asked what they would see as a deterrent to buying counterfeited products, respondents commented that they would think twice about buying products sold by groups with links to terrorist organizations. This was especially the case for American respondents. Conversely, when asked if they had any concerns about loss of tax revenue or job losses, most consumers of pirated goods expressed less worry.

Following up on Mr. Stewart's comments, Mr. John Tarpey, Acting Director for the Communications and Public Outreach Division at WIPO, commented on the scope of the problem of piracy by describing how in one school class surveyed by his division, only one out of 24 students had never participated in the illegal downloading of music from the internet. A priority for all stakeholders should therefore be to reach out to young people. The point of reaching out to the next generation was also stressed by Mr. David Benjamin, Senior Vice President for Anti-Piracy at Universal Music Group (USA). Instead of arguing that there was a lack of awareness among the young, however, Mr. Benjamin claimed that 99.9% of all people, including kids, who are downloading illegally from the internet, are fully aware of the illegal nature of their actions. Mr. Benjamin's recommended approach to showing young people the consequences of what they are doing is to explain that there would be no more "cool" jobs on TV or in music if piracy continued. Therefore, if they want jobs to remain available in the creative sector, they should think twice before illegally downloading from the internet.

Health and Safety Risks

The first to address the audience on this topic was Mr. Robert L. Mallett, Senior Vice President of Worldwide Public Affairs and Policy from Pfizer Inc. (USA). Representing the world's biggest pharmaceutical company and an industry heavily affected by counterfeiting, Mr. Mallett explained how drug counterfeiting is estimated to double in the next few years. The main reason for this is financial; the producing and sale of fake medicines has become more profitable than drug trafficking. While other areas of piracy are still important, the issue of counterfeit drugs is

particularly important due to their potentially lethal nature. Since the consequence of this type of piracy is essentially murder, Mr. Mallett proposed that stricter laws and punishments should be enforced for counterfeit drugs than for other forms of piracy.

Another industry where counterfeit products can have potentially lethal consequences is the automobile sector. Mrs. Beate Lalk-Menzel, Senior Intellectual Property Counsel for DaimlerCrysler A.G. in Germany, explained how the industry she represents has experienced a rapid growth of piracy over the last few years. 10% of all automotive products worldwide are counterfeit. Further, counterfeiting techniques in the automotive sector are getting increasingly sophisticated, making it impossible to visually distinguish authentic products from those that are counterfeit. This, of course, is not the case when it comes to quality, and using a counterfeit automobile product can have devastating effects.

Moving Forward

Coming from the perspective of a developing country, the Honorable Amos Wako, Attorney General of Kenya, argued that more resources are needed to build capacity. Having the right IP regime in place is not a priority for many developing countries preoccupied with issues of far greater urgency. Yet, a proper IP regime should be part of any country's economic and social growth strategy. This is especially true for developing countries where counterfeited goods are so prevalent due to the limited access that their citizens have to authentic products, either because of their limited supply or because of financial restraints. Mrs. Rita Hayes, former Deputy Director General of WIPO, joined in this sentiment, stressing the need for a clear and coordinated effort to build capacity in developing countries by encouraging collaborations between industry, nation states and international organizations.

The day concluded with the sentiment that, though there is still much ground to cover, progress is being made in the battle against counterfeiting and piracy, and we are, indeed, moving in the right direction. The general conclusion of the day, therefore, was to continue doing what we are doing in this area, but to keep striving for ways to improve.