

Know IP – The Stockholm Network’s Monthly IPR Journal Volume 3: Issue 3. March 2007

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Commentary

Another One Bites the Dust: EU Enforcement of IPRs – Helen Disney and Dr. Meir P. Pugatch ¹

For a while it looked like the EU was for once going in the right direction, and that EU legislators were beginning to grasp the importance of protecting and enforcing IPRs.

But, in what is becoming the rule rather than the exception (such as in the case of the Computer Implemented Inventions Directive of 2005), the EU legislative pipeline may once again turn a crucial piece of IP legislation on its head.

The proposed Directive on criminal measures aimed at ensuring the enforcement of intellectual property rights (so called IPRED2 - 2005/0127 COD) was supposed to be an important step in the EU's efforts in the fight against piracy. The introductory text of the IPRED2 amended proposal of April 2006 provided a sound explanation of the need for this directive: "Counterfeiting and piracy, and infringements of intellectual property in general, are a constantly growing phenomenon which nowadays has an international dimension, since they are a serious threat to national economies and governments. The disparities between the national systems of penalties, apart from hampering the proper functioning of the internal market, make it difficult to combat counterfeiting and piracy effectively".²

Indeed the economic and commercial implications of IP piracy in the EU are significant (though difficult to measure given the 'unreported' statistics). According to the European Commission, counterfeiting is estimated to reduce EU GDP by €8 billion annually, with individual companies losing a total of between € 45 billion and 65 billion. Annual losses in revenue are estimated at 7.2% for

perfume and toiletries, 5.8% for pharmaceuticals and 11.5% for the toy and sports sector.³ The level of software piracy in the EU was estimated at 36% in 2005.⁴

The IPRED2 aims to secure two main strategic objectives: to supplement Directive 2004/48/EC of 29 April 2004 on the enforcement of intellectual property rights, and to harmonise the level and scope of the use of criminal law by EU members as a means to combat IP piracy. In essence, the IPRED2 aims to harmonise the use of criminal penalties such as imprisonment (at least 4 years), fines (between €100,000 and 300,000), the seizure of goods belonging to the IP offender, the destruction of infringing goods, and the total or partial closure of sites used for IP piracy.

Given the need for such a Directive, the legislation process was supposed to be simple. But the latest amendments, approved by the European Parliament Legal Affairs Committee on March 20th, suggest that by the time the Directive is approved, little will be left of its original purpose. The latest report by MEP Nicola Zingaretti (January 2007) had more than 120 amendments to the revised Directive proposed by the Commission.⁵

The current text of the Directive now states that piracy acts based on the violation of patent rights shall not be subject to criminal penalties.⁶ In other words, patents are being excluded from the remit of this Directive. One would have hoped that with the ongoing fiasco of patent

¹ Helen Disney is CEO of the Stockholm Network. Dr. Meir Perez Pugatch, Haifa University, is the Research Director of the Stockholm Network.

² <http://register.consilium.europa.eu/pdf/en/06/st08/st08866.en06.pdf>

³ European Commission. Proposed Directive on enforcement of intellectual property rights: frequently asked questions (30 January 2003), http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/03/20&format=HTML&aged=1&language=EN&guiLanguage=en#file.tmp_Foot_1

⁴ BSA-IDC Global Study <http://www.bsa.org/globalstudy/upload/2005%20Piracy%20Study%20-%20Official%20Version.pdf>

⁵ See draft report by MEP Nicola Zingaretti, January 2007-03-25

http://www.europarl.europa.eu/meetdocs/2004_2009/documents/am/646/646383/646383en.pdf

⁶ *Ibid.*, Draft report by MEP Nicola Zingaretti (Amendment number 35)

harmonisation in the EU, patent rights and patented products would benefit from this Directive's straightforward protection. Alas, one would be wrong.

The Legal Affairs Committee also chose to narrow the concept of "intentional infringement" – defining it as the "deliberate and conscious infringement of the right concerned for the purpose of obtaining an economic advantage on a commercial scale, or acceptance of such infringement".¹ Other than the fact that this definition now excludes all types of intentional infringement that are not based on a commercial scale (which means that an individual can choose to violate others' IP rights all day long and get away with it), it would also be interesting to imagine how the parties would litigate in the courts on the meaning of the term "conscious" (if one is asleep while his illegal downloading of files from the internet is taking place, is he conscious or not?).

Moreover, the amended text seems to narrow the scope of the term "commercial scale", as well as to provide a permissive definition of the principle of "fair-use" (for example, stating that the creation of multiple copies for classroom use is allowed – with no reference to the number of copies).

Other requirements, such as that "the involvement of the holders of intellectual property rights concerned should constitute a supporting role that will not interfere with the neutrality of the state investigations" seem to diminish the ability to put this Directive into practice.²

All this is far from being surprising. Given past failures of IP legislation in the EU one can only conclude that the EU does not miss an opportunity to miss an opportunity to improve its IP regime.

Response

On DRM – Charles Crouch³

"I enjoyed reading your article "The Economics of DRM in Capitalist Markets" in the February edition of *Know IP*. Here are some comments from a somewhat different perspective. While DRM is a central issue in the iTunes store, other business issues also have significant importance and cannot be ignored.

"While Steve Jobs would be well aware of the pros and cons of DRM, I think that his comments about abandoning DRM should be viewed in the context of the current business relationship among Apple, the major content producers (music, movies, video, TV), and Apple's own customer base. When considering these different players, one should remember that:

- the vast majority of songs are sold digitally with no DRM at all, on CDs.
- encumbering online music downloads with DRM restrictions, when other sales channels do not, does not make business sense.
- from Apple's viewpoint, DRM offers few advantages, but requires resources to maintain a secure system.

Why iTunes?

"The purpose of the iTunes store and digital downloads is not to make significant money for Apple. It is reported that Apple makes about 4 cents per sale in the US, while the majority of the 99 cent sales price goes to the record companies. Instead Apple makes digital downloads available to provide content for the iPod and thus increase iPod sales, from which Apple earns the majority of its revenue. The iTunes store has both free and paid content, some with and some without DRM protection, but all designed to provide a rich, rewarding experience to Apple's customer base.

"DRM has been added to this mix because record companies insisted on it to protect their

¹ *Ibid.*, Amendment number 41

² *Ibid.*, Amendment number 19

³ Lecturer in e-commerce, Boston University, Brussels, Internet Business Consultant

own IP. Here occurs a fundamental difference of opinion between the two, as record companies want to use DRM to control the ability of a consumer to play songs, while Apple wishes to make it as easy as possible for a consumer to play songs anywhere, anytime.

“From this perspective, these pro and con arguments surrounding DRM seem to me to be more about determining how freely consumers can use material they have purchased than about protecting rights of IP holders. Apple would like consumers to have as much freedom as possible to enhance hardware sales, while record companies would like consumers to purchase a new copy of a song with a new set of rights for each new device or use. Much of the resistance to DRM comes from this issue, where consumers are asking, “I already own a copy of a song on an LP record, cassette tape, or CD. Why should I have to purchase another copy to be able to listen to it on my iPod?”

Rights Management of Digital Objects

“When one addresses DRM in broad terms, it is evident that this is a useful tool for protecting the legitimate rights of IP holders while still permitting consumers to use the material they have bought. Previously when a physical object has been involved, rights management has been controlled through the ownership of the physical object, be it a book, CD, or cassette tape. Books can be photocopied, but the time and trouble required is such that most people will purchase a copy. Therefore books are not printed on more expensive, copy-resistant paper. Frequently, physical ownership has been seen as a sufficient deterrent, since transferring or transforming the physical media stopped most duplication.

With digital media the rights management process becomes harder, as there is no longer a physical object as reference for ownership and digital bits are infinitely changeable from one media to another. Transformation or duplication is much easier, and each new version is a perfect copy of the original.

“A song or movie sold in digital form can include a certain set of rights which are specified by a DRM system. These rights may be loose or

restrictive, but there is no longer a physical object to serve as a common reference for all parties. To complicate the issue, each content producer can apply a different set of rights to each separate song or movie sold, making it difficult for consumers to determine exactly what they have bought. If a DRM system is overly complicated or restrictive, especially when compared to existing ‘fair use’ legislation and what the public has become accustomed to in the past, there will be conflict.

“The article discussed several different critiques of DRM, addressing them in broad terms. However, again the business issues in this particular case complicate the arguments presented.

The "lower your price" critique

“This critique argues that reducing prices for digital content will reduce the free-rider problem. However, Apple has not attempted to find the most efficient price point for its music sales to minimise the free-riders and maximise customers who will purchase. Instead, Apple has maintained a single price for all songs, along with a relatively open set of rights to play music on different devices, in the interest of simplicity for its own customer base. This makes sense from Apple’s view, since Apple’s reason for selling digital media is to promote hardware sales, not to maximise record companies’ profits. Most record companies would prefer a differential pricing model where the most popular songs would cost more, but Apple has resisted this because having more content available for its customers is more valuable than maximising revenues on a small portion of its overall business.

The "your technology doesn't work" critique

“This critique asserts that every DRM system devised so far has been broken, and future ones probably will be broken as well. Therefore DRM is “a necessary, yet insufficient tool for KII rights-owners to secure at least a portion of their rights.” The question can be restated as not whether DRM systems can be broken, but whether they are good enough to stop the majority of people from becoming free riders

without being overly burdensome to the consumer.

“For most technology systems, each incremental improvement becomes increasingly harder and more expensive. DRM is no exception, and trying to create a perfect DRM system will be costly to develop and maintain. It is reported that contractually Apple is required to maintain a secure DRM system to protect the rights of the IP holders. Apple’s FairPlay DRM system has been broken, but so far Apple has been able to close the break each time because it controls the entire DRM system from the online store through the download process to the player itself. Resources are required to maintain this system, and removing it would remove a layer of complexity and cost from the iTunes store that currently brings no significant benefits to Apple.

The "change your business model" critique

“This critique states that business models for Kll owners are obsolete, for example having to buy an entire CD for just one song. From the record companies’ perspective, this has been a good model since hit songs could be spread across several CDs to encourage sales, rather than putting them all on one disc. The same model has been used for selling other physical objects, such as automobiles, where the customer has to take an entire package in order to obtain one desired feature.

“With the rise of the Internet and its ability to deliver customised, personalised content, these business models based on physical objects are rapidly breaking down. Consumers are demanding the ability to buy just what they want, not what the producer would prefer to sell, and smart companies are developing new business models to meet this new consumer behaviour pattern.

“A number of different models for selling music online have already been tried, but all of them have failed in the market except iTunes. The iTunes service has succeeded by offering consumers the ability to obtain the specific songs that they wanted at a reasonable price. This was facilitated through a reasonable balance between sufficient DRM to protect IP holders and a

system that is easy for consumers to understand, offering them a convenient set of choices for using the material they have purchased on different devices.

“Because iTunes has been such a success with consumers, it has ended up controlling the digital download market. This has brought up a new set of issues regarding market size and perceived monopolies, but in the end this situation has occurred because Apple has delivered what consumers wanted, and consumers have responded enthusiastically.

“There is one clarification in the article. In the third paragraph you state “For example, Apple’s music files include DRM to restrict them from being played on Apple hardware.” On the contrary, Apple’s FairPlay licensing system permits playing songs and other media purchased from the iTunes store on both Apple and non-Apple computers running the iTunes software. It does limit the number of authorized computers playing songs to five, but the number of iPods is unlimited. Regarding portable music players, Apple’s FairPlay system does restrict media purchased through the iTunes store to the iPod, but this is no different from the Microsoft Plays-for-Sure DRM which also restricts content to devices running Microsoft’s software.

“Thanks again for an interesting article. I am sure this issue is far from being settled.”

Experts’ Corner

Three Dimensional Objects as Trademarks – Amir Friedman¹

As consumer sophistication develops, more and more producers are focusing not only on the brand under which their product is sold, but also on the external, three dimensional appearance of the product.

¹ Adv. Amir Friedman is the founder and owner of Friedman & Co Intellectual Property Law offices, in Israel. He is the manager of the intellectual property division at the Academic College of Law in Ramat Gan. (www.label.co.il).

Three dimensional objects are much more complex in structure than the basic bottle or box. Containers that house a product have become an art in their own right. Note the countless shapes of bottles containing Scotch, Ouzo, liquors and other types of beverages. Even more striking are the countless types of perfume bottles with their array of designs, colours and shapes.

The majority of trademarks that are registered and used in commerce are flat or two dimensional. However, many laws around the world provide for the registration of marks even if they are three dimensional

Consequently, a question arises on the extent to which the three dimensional appearance of the object should be covered by a trademark.

My argument is that as long as a three dimensional object performs the function of a trademark it should be protected as such, without regard for its potential protection as a design or in some countries even as a simplistic patent.

In my view, these two laws are not, and should not be mutually exclusive, because they are intended to serve distinctly different purposes. Furthermore, the laws of design patents and the laws of trademarks complement rather than supplement each other.

Those who are weary of this approach call for a narrower application of such a rule. They base their assertion on two underlying assumptions: First that a three dimensional object cannot be sufficiently distinctive so as to be awarded to a specific party and second that three dimensional objects should be protected under the laws protecting design patents as opposed to trademarks.

Their contention is that boxes, bottles or any other three-dimensional object should be left within the public domain. They would most likely ask: could another competitor sell his competing beverage in something other than a bottle?

The sceptic's approach leads to an unjustified separation between the rules of trademarks and the rules of design patents and undermine the basic rationale of trademark law. The law needs to, and indeed does, facilitate and provide trademark protection to three dimensional objects.

It should be noted, however, that I do not argue for the need to automatically apply trademark protection to any three dimensional object. Clearly, such an argument would be without merit, because it would render competition virtually impossible. For example, how would one winery market its wine if another competing winery controls the rights over the use of bottles?

The only feasible method in which to determine the "trademarkability" of a three dimensional object is to see if it can actually function as a trademark.

Trademarks are intended to serve two primary functions. The first is that of indicating the source of a product and the second is that of distinguishing one product from another competing product. Thus, marks are able to assure consumers of the quality of a product and to encapsulate the identity of the product into the single brand under which it is sold.

In this regard we share the view that "it must always be remembered that the trademark is a marketing symbol and its purpose comes from how it is used in the market place".

In order for the three dimensional object to be recognised and registered as a trademark, the owner of the mark must demonstrate that his mark is used in order to identify the source of the goods and that registration of that mark will not impede the rights of others to use basic shapes and packaging.

Thus, a three dimensional object should be considered to be a trademark, if it is capable of distinguishing the goods of one entity from the goods of another and is not the goods themselves. For example, the basic figure of a battery will not be accepted for registration as a

trademark because it constitutes the product itself.

To summarise, three dimensional objects could and should be the subject of protection under the laws that protect trademarks, if that object is distinctive and capable of distinguishing the goods of one entity from those of another.

Just as in the case of word marks or picture marks, so too in the case of objects, both categories should qualify for trademark registration, if they are distinctive and capable of distinguishing the goods of one market player from those of others.

New and Notable

International Property Rights Index (IPRI) – Scott LaGanga¹

As Tom Bethell wrote in *The Noblest Triumph*, “When property is privatised, and the rule of law is established in such a way that all including the rulers themselves are subject to the same law, economies will prosper and civilisation will blossom.”

Recognising this principle, the Property Rights Alliance (PRA), in conjunction with 37 global partners, is pleased to announce the first annual International Property Rights Index (IPRI). It is a groundbreaking study that shows the intrinsic connection of physical and intellectual property rights with global economic growth and development.

The inaugural study ranks countries according to the strength of property rights using three categories of measurement: legal and political environment, physical property rights, and intellectual property rights. Seventy countries representing over 95% of world GDP are incorporated into the initial release of the study.

Hernando de Soto, the famed property rights advocate and global economist, argues that many

developing countries lack effective property rights, causing a major hindrance to their industrialisation and economic growth. The study finds an 89% correlation between GDP per person and the IPRI score given to any incorporated country. In fact, countries falling in the top quartile of the study have an average GDP per capita more than seven times higher than countries in the bottom quartile, demonstrating the disparity between countries that maintain strong property protections and those that do not. This study indicates that the correlation between economic growth and property protections is not coincidental; property rights are a major factor in economic development.

The IPRI Index is especially relevant in elucidating major differences existing between Eastern and Western European countries. When comparing the average scores of the regions, Western Europe on the whole received a score of 7.4, making it the highest scoring region in the Index. The Central and Eastern Europe (CEE) and Russian region, on the other hand, received a significantly lower score of 4.2, making this region among the lowest performing regions globally. This disparity between Eastern and Western Europe demonstrates the legal and economic changes needed for Post-Soviet countries to “catch up” to other countries in the EU.

Northern Europe, a subset of the Western European countries in the study, fared especially well as a result of the region’s strong physical property rights and legal and political environment. Notably, Norway was the highest ranking country in the survey with a score of 8.3 and performed well in all three categories of measurement. However, many countries in Southern Europe, including Italy and Greece, lack strong property rights and stable political environments.

This study demonstrates that many differences exist within Europe, and there are many potential reasons for these differences. Western Europe has a long standing tradition of private property rights. The countries within this region are some of the oldest democracies in the world. Many of the Central and Eastern European states, however, do not possess sophisticated

¹ Executive Director, Property Rights Alliance (PRA)

democracies because these free capitalist economies have only existed since the fall of the Soviet Union. CEE members need time to gain confidence in these rights and institutions, as the protection of private property has yet to become an important aspect of their economic growth. Certain steps can be taken to foster the belief in this system, including improvement in the court system and in law enforcement. As 2007 is the base year for the Index, it is the hope of PRA and our global partners that hopefully some of the poorer performers can take steps to improve their property rights atmosphere in years to come.

Northern European countries, despite their high scores in the Index, are not immune to criticism. In many of these countries, health care systems tend to be socialised. This provides consumers with fewer choices and is counter to the free market capitalism that fosters property protections. This variable is not accounted for in this year's IPRI, but would certainly have changed the results of some of the countries that had stronger scores in the index.

There are other factors and events that are not taken into account in this study. For example, Norway recently issued an ultimatum to Apple, Inc. stating that the corporation had until October 1, 2007 to make iTunes compatible with rival digital music players. Apple allows consumers to download songs on iTunes software and transfer them to the iPod, a music playing device. Norway has been joined by other high performers in the index such as Finland, France, Germany, and the Netherlands in this directive. These countries claim that they are simply trying to establish a fair market where consumers are not tied to two products by the same company. Others claim that these policies could be disastrous for innovation. Events such as these are not accounted for in this study, yet these intellectual property rights concerns will continue to affect innovation in the future and will affect the rankings of the countries issuing this ultimatum in next year's IPRI.

Despite the mediocre performances of Eastern European countries, there is hope for improvement as many of them are experiencing significant economic growth. In 2006, Poland, the

Czech Republic, Ukraine, and Romania each had at least 5.3 percent GDP growth. This growth surpasses some of the lacklustre performances by developed Western European countries in the study. This study suggests that this economic growth will continue as the citizens of these countries gain access to free markets and private property protections.

IPRI indicates a widening gap between Western and Eastern Europe. Many of the poor performances of former USSR satellite countries could be attributed to a relatively limited exposure to private property. We are already seeing significant growth in many of these Eastern European countries and hope further developments will lead to improvements in some areas of the Index. The *raison d'être* of IPRI is to showcase the link between private property rights and economic development. Hopefully, it will provide underdeveloped countries with the proper tools to help foster similar economic growth.

To learn more, visit
www.internationalpropertyrightsindex.org

Forthcoming Publication

Beyond Lisbon - Reviewing EU policies on IP, Competition and Innovation

A new review by the Stockholm Network suggests that the EU should implement significant changes in its current policies in the areas of innovation, competition and intellectual property.

In particular, the Review suggests that the EU and its member countries should:

1. Redefine and narrow the strategic objectives of the Lisbon Strategy. Instead of aspiring to become the most competitive and dynamic knowledge-based economy in the world by 2010, the EU and its member countries should be more modest in their objectives. At best the EU should aspire to be better prepared to compete in the global knowledge economy by fundamentally strengthening key areas that currently impinge on its innovative output.

2. Make investment in the European Research Area (ERA) a political objective. The only way that the objective of investing 3% EU GDP in research and development (R&D) may be secured is to link it with other political issues such as the Common Agriculture Policy. It is important to make EU policy makers and politicians accountable for their current choice to under-invest in the ERA.

3. Ensure that the EU's competition policies – particularly with regard to the application of Article 82 – are synchronised with other objectives of the Lisbon Agenda. Competition policy should be considered a means to an end and not an end in itself. Since competition policy is aimed at promoting innovation, consumer choice, competitive prices and more efficient allocations of resources in general, there is a great need to ensure that the execution of this policy does not come at the expense of other policies that seek to maintain the same objectives. Accordingly, Article 82 should be interpreted or used in a manner that is consistent with other fundamental issues under the EC Treaty, such as Article 3 and Article 157 (competitiveness, innovation and technological utilisation).

4. Take immediate steps to harmonise the EU patent system by adopting and (unilaterally) implementing the London Agreement and the European Patent Litigation Agreement - to date, attempts to harmonise the EU patent system via the standard EU political track has failed. In the interim, member countries should strive to immediately implement two important legal instruments which were negotiated voluntarily by the member countries, and that could significantly improve patent harmonisation in the EU. The first is the Agreement on the application of Article 65 of the Convention on the Grant of European Patents, of 17 October 2000 (London Agreement). The second is the European Patent Litigation Agreement (EPLA), or formally the Draft Agreement on the establishment of a European patent litigation system of November 2003.

About *Beyond Lisbon*

This review seeks to build on some of the existing high quality data to provide a concise overview of EU policies and practices in the fields of innovation, intellectual property and competition. It also aims to highlight some of the key challenges that the EU currently faces in these fields. It is hoped that the review will provide a more comprehensive and simple (though not simplistic) snapshot of EU objectives concerning its knowledge-based activities, as well as the extent to which the EU was able to secure these objectives.

The review also goes one step further, as it seeks to provide concrete policy recommendations for improvement. Such recommendations are not limited to the subject matter of EU policies and practices but also occasionally provide some political insights as to how one may promote such policies.

Structurally, the review is divided into five main elements. For each of the main issues (innovation, competition and intellectual property), the review identifies the EU's strategic goals, its key relevant objectives, the degree of the EU's success in terms of its ability to secure these objectives, analysis of EU policies and practices and some policy recommendations for the future.

www.stockholm-network.org/publications/list.php

Recent Event

Stockholm Network – UNCTAD Debate on Pharmaceutical IPRs 20 February, Geneva

On 20 February 2007, the United Nations Conference on Trade and Development's International Arrangements Section (Work Programme on Technology Transfer and Intellectual Property) and the Stockholm Network Intellectual Property & Competition Programme co-hosted a debate on pharmaceutical IPRs at the UN's Palais des Nations in Geneva, Switzerland.

The debate was attended by more than 40 representatives from the international organisations, industry, media, academia and civil society, most of who were actively involved in the question and answer session at the end of the debate.

Co-chaired by Helen Disney, CEO of the Stockholm Network and Christoph Spennemann, Legal Expert at UNCTAD, the central theme of the debate was pharmaceutical intellectual property rights

During the debate some tough questions were asked: Are pharmaceutical IPRs a barrier to access to medicines or are they essential to it? Do pharmaceutical patents prevent or enhance pharmaceutical research and development? Are compulsory licenses a legitimate tool for price negotiations or are they a predatory mechanism aimed at circumventing the rights of developers? Is there any hope at all for multilateral IP negotiations, and for whom? Are pharmaceutical IPRs a zero sum game or can they lead to win-win results?

Speaking on these highly controversial issues were Dr Graham Dutfield, Herchel Smith Senior Research Fellow, Queen Mary, University of London; Dr Meir P. Pugatch, Head of the Stockholm Network IP and Competition Programme; Jamie Love, Director, Knowledge Ecology International and Dr Eric Noehrenberg, Director, International Trade and Market Policy, International Federation of Pharmaceutical Manufacturers Association.

The first and perhaps most important issue to be addressed during the debate was the one of access to medicines and whether pharmaceutical IPRs represent a barrier to access to medicines or are essential to it. While Jamie Love argued that high-priced, patented drugs inevitably make access to medicines more difficult for developing countries, Dr Pugatch and Dr Noehrenberg both pointed to the importance of IPRs to incentivise research and development in the pharmaceutical sector. Furthermore, Dr Pugatch argued that “patents are especially important for small companies, which rely on IPRs to attract funding from investors”.

In the context of access to medicines and with the recent case in Thailand in mind, the uses and abuses of compulsory licenses (CL) were also heatedly debated. “CLs are essential for developing countries”, argued Jamie Love. Dr Dutfield followed up on this argument by pointing to the fact that CL is a legitimate tool because the rights owner receives a reimbursement. Dr Pugatch on the other hand, questioned whether these reimbursements qualify as compensation, and argued that “CLs should be the exception that makes the rule”.

Due to the success of the debate, the Stockholm Network and UNCTAD are already planning a follow-up event to continue the discussion. Further information will be announced both in Know IP and on the Stockholm Network web site: www.stockholm-network.org

News Flashes

Top Stories in the World of IP and Competition

1) Apple and EMI have announced that all EMI music being sold online will be available DRM-free. The decision is being seen as providing a boost for EMI, which has been struggling against takeover rumours for sometime. Tracks from EMI's back catalogue and new releases will be available in the new format at a price 30 cents or 20 pence higher than the versions with DRM applied which will remain on sale. The news also amounted to a PR coup for Apple, which will be the first retailer to offer the newly encoded tracks, bringing it at least half a day's good publicity before...

2) ... the European Commission announced it was commencing an investigation into alleged anti-competitive practice involving Apple. For once, the charges do not centre on interoperability and DRM issues, instead focusing on the national restrictions of Apple's iTunes store, which prevents customers in one common market country from buying goods in another. However, the Commission qualified its announcement by saying it did not feel Apple was directly to blame, saying the present arrangement

was “imposed on Apple by the major record companies and [the Commission does] not see a justification for it”.

<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/07/126&format=HTML&aged=0&language=EN&guiLanguage=en>

3) Media giant Viacom is suing Google for \$1 billion over repeated copyright infringement on Google’s newly acquired Youtube site. Questions the US courts will have to tackle include whether sites such as Youtube are responsible for what their users post. Up until now, the ‘safe harbour’ provision of the Digital Millennium Copyright Act says that if hosts remove infringing content promptly once notified, they cannot be pursued through the courts. But if users repeatedly repost infringing material, what happens?

<http://search.ft.com/nonFtArticle?id=070315001105> (subscription required)

4) The British Court of Appeal has found against a former employee of Euronext-Liffe, who had hoped to secure patent rights on inventions he devised while at the firm. Overruling a previous High Court judgment, the court found that inventions created a part of Dr Pavel Pinkava’s “normal duties” and as such, the IP rights should be the property of Liffe, not Pinkava.

<http://search.ft.com/nonFtArticle?id=070316001088> (subscription required)

5) The fallout of Thailand’s decision to compulsorily license continues. Abbott Laboratories has withdrawn seven requests for medicine registrations in Thailand, whilst activist groups have variously accused Thailand of breaking international trade laws, or heartily congratulated its stance. The two opposing groups of protesters congregated on the steps of the US Capitol on March 16th as submissions were made by both sides to lawmakers and staffers.

<http://www.ip-watch.org/weblog/index.php?p=569&res=1280&print=0>

6) The UK’s Patent Office is shortly to cease to exist. In its place will rise the Intellectual Property Office, reflecting its growing roles in trademark and copyright issues.

<http://www.pcpro.co.uk/news/106530/the-uk-intellectual-property-office-is-born.html>