

IP Perspectives

Safety in numbers – working together to build respect for IP

Rights holders have critical roles to play in establishing an environment that is respectful of intellectual property, as close public-private collaboration is essential

Counterfeiting and piracy remain major problems worldwide, fuelled by socioeconomic variables such as poverty, ambivalent consumer attitudes towards IP rights and easy access to illegal goods. Close collaboration between policy makers, law enforcement officials, industry and consumers is essential, with each stakeholder having its own role to play in creating an environment that is respectful of intellectual property.

The need for appropriate contributions from rights holders in this regard has always been clear in the relevant policy dialogue at the World Intellectual Property Organisation (WIPO). This article outlines the diverse contributions that can be made by rights holders in the effort to build respect for intellectual property, from the lessons learned through the activities of WIPO.

Collaborative efforts

When WIPO's member states decided in 2002 to establish the Advisory Committee on Enforcement (ACE) to spearhead global IP enforcement issues, they underscored the importance of coordinating IP enforcement activities in different forums, including those of other international governmental and non-governmental organisations and the private sector. The fifth session of the ACE in 2009 was devoted to "Contribution of, and cost to, right holders in enforcement, taking into account Recommendation No. 45 of the WIPO Development Agenda", which requires that IP enforcement be approached in the context of broader societal interest and development-oriented concerns. The perspectives of rights holders are regularly shared at the ACE through industry associations which have observer status, as well as in other WIPO programmes. The relevance of coordination is also highlighted as one of WIPO's nine strategic goals approved by member states in 2009. Strategic Goal VI on International Cooperation on Building Respect for IP calls for systematic and effective cooperation

and coordination between WIPO and other relevant public and private stakeholders.

A well-known and established public-private partnership in this area is the Global Congress on Combating Counterfeiting and Piracy, a collaboration between WIPO, the World Customs Organisation and INTERPOL in cooperation with the business community, represented by the International Chamber of Commerce Business Action to Stop Counterfeiting and Piracy and the International Trademark Association. The Seventh Global Congress, which took place in Istanbul on April 24 to 26 2012, attracted over 850 delegates from more than 100 countries, ranging from government officials to representatives of intergovernmental and non-governmental organisations, civil society and industry. This broad stakeholder representation reflects the various contributors to the IP enforcement landscape, aimed at building an environment, that is respectful of intellectual property.

Understanding infringement

Rights holders comprise a key beneficiary group of the IP system and have a direct business interest in IP protection. Their direct and dedicated engagement is thus critical in building respect for intellectual property on various fronts, ranging from better understanding of the consumer mindset with regard to infringement to the development of sustainable business models, and from education and awareness-raising initiatives to practical enforcement.

Any IP enforcement effort, including by the industry, must be founded on an adequate understanding of consumer attitudes towards, and motivations for, IP infringements. There are marked differences between consumers who purchase counterfeit products knowingly and unknowingly. Awareness-raising initiatives and enforcement strategies should be developed in light of these distinctions, bearing in mind social, economic and technological variables such as affordability and availability of legitimate products. Any relevant and reliable data obtained by rights holders through market studies would be usefully shared with policy

makers to establish a fuller picture of the nuanced landscape of IP infringement and appropriate remedies.

With a better understanding of societal needs and interests in relation to IP-protected goods, the industry can develop timely products and services that better respond to consumer desires, which in turn may significantly affect the size of the counterfeit and pirated goods market. For instance, the legitimate digital music market took off as new legal offerings meeting consumers' changing expectations and requirements became available.

Rights holder engagement

Once the socio-economic variables for the consumption of IP-protected goods are duly considered, practical IP enforcement can more meaningfully take effect. Operational enforcement is frequently initiated by rights holders themselves. Rights holders develop technologies to make counterfeiting more difficult, monitor and engage in intelligence gathering, send cease and desist letters, undertake preliminary investigations at the retail level, trace distribution networks, file applications and complaints to law enforcement authorities, and provide relevant information for more detailed investigation by law enforcement. Hence, consistent rights holder support throughout the enforcement process is vital. Enforcement efforts by the authorities may be thwarted if infringing goods are seized and subsequently returned to commercial channels due to a lack of rights holder action – an occurrence which is unfortunately regularly reported in many jurisdictions that are less commercially important for rights holders.

One example of an innovative contribution by rights holders, shared at the ACE, concerns the storage, disposal and destruction of infringing goods – something which involves increasing costs and technical complexities. European anti-counterfeiting network REACT, a non-profit rights holders' organisation, together with the Dutch national mental health authority, co-owns a recycling facility where seized IP infringing goods whose destruction has been approved by Dutch Customs can be sorted, dismantled and processed for recycling. The remaining materials – including polycarbonate granules derived from shredding pirated DVD/CDs – are sold on to specialist recycling outfits and used to produce a range of goods, such as furniture, clothing, shopping bags and even construction materials for sports facilities and playgrounds. Such an environmentally and socially sound outcome calls for close

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coordination and cooperation between Dutch Customs, rights holders and social agencies. This model may serve to inspire other collaborations with similarly sustainable outcomes.

Meanwhile, a number of industry players, both online and offline, are increasingly adopting self-regulatory measures to remove infringing goods and build consumer trust in their space. At the eighth session of the ACE in December 2012, the activities of the BASELWORLD trade fair and several contractual mechanisms introduced by online platforms to address counterfeiting and piracy were highlighted. These endeavours are increasingly evolving into voluntary codes of industry practice, which complement conventional mechanisms to protect and enforce intellectual property. Examples include the French Charter on the Fight against Cyber-counterfeiting, the EU Memorandum of Understanding on the Sale of Counterfeit Goods via the Internet and the US Centre for Copyright Information.

Finally, training and awareness-raising initiatives are important building blocks in

promoting respect for intellectual property. Rights holders are valuable partners in such activities, sharing knowledge and expertise in product identification, and techniques for distinguishing between genuine and counterfeit goods and identifying suspects engaged in the manufacture, distribution and sale of infringing goods. Effective and reliable communication between rights holders and public authorities is critical in this regard.

A policy for the future

As outlined above, rights holders have critical roles to play in establishing an environment that is respectful of intellectual property. The costs to rights holders of engaging in such activities should not be overlooked; they are far lower than the costs of appointing enforcement staff, hiring private investigators, storing and destroying infringing goods, and other enforcement costs, which divert resources that might otherwise be invested into the core business or in other sustainability projects.

The underlying public policy objectives

of the IP system as a force for innovation and creativity, with developmental and technological objectives, call for close public-private collaboration, where rights holders can become 'citizens' of the local community and join in the continued efforts of policy makers, enforcement officers and society at large to build respect for intellectual property. [WTR](#)

The views expressed in this article are not necessarily those of WIPO or any of its member states

Eun-Joo Min is senior legal counsellor, Building Respect for IP Division, at the World Intellectual Property Organisation eunjoo.min@wipo.int