



IPR/Counterfeiting Initiative: Questions for Industry Associations

Brussels 09/03/2006

1. EU/US working group on IPR

Questions for industry:

- Whether and how it would be possible to organise a single EU voice on IPR issues?
 - We feel that it is both necessary and possible to have a single EU voice on IPR issues on the level of general. However, we feel that it will be necessary to have, as is the case in the industrial policy Communication, a twofold approach:
 - First at a horizontal level with the message towards society and trade partners that IPRs underpin innovation, provide the basis for economic activity and the generation of wealth and safety; because of these reasons IPRs need to be respected and their enforcement facilitated.
 - Second at a sector specific level more concrete solutions should be developed which take into account the specific needs and challenges of different industrial sectors (e.g. the music industry would not be interested in defending patents).
 - Today there are already a number of existing fora organised by industry at both horizontal and sectorial level with a great range of knowledge and ideas whose expertise can be used. With regard to the coordination process, we feel that the Commission, as the “neutral” actor, should take the lead by requesting input and organising work in this area in the follow up of the Communication.
 - We also suggest that the Commission itself should establish stronger links between the units of the different Commission DGs dealing with the complex issue of IPR and that they should always coordinate their work in order to ensure consistency when developing measures in this area including for dealing with counterfeiting. This coordination could be institutionalised with the creation of a permanent group or network.
 - The Commission should also suggest that Member states should establish such networks between the relevant national ministries.
- Do you have specific proposals for on the spot enforcement networks in third countries? Which sectors and/or companies would be interested?
 - The European engineering industry is very much interested in increasing the protection of IPR activities in third countries and feels that this should be the focus of our work. More concentration on third countries is needed since most counterfeited products both originate from (mainly from China) and are also sold there; the result is consequently that the damage to companies is much bigger in these traditional export markets than in Europe. As already suggested at the consultation meetings organised in the past weeks we think that the Commission representations in third countries should create a specific department that would run an IPR help desk for affected European companies and should establish and maintain good contacts with local decision-makers.

- Also national diplomatic missions and trade promotion agencies should appoint a member of their staff as a contact point on IPR protection. Investment and trade promotion services could go along with IPR protection services.
- There are a number of good examples where European manufacturers of the same product group cooperate and have already established enforcement networks in third countries. The main purpose is to collectively act against counterfeiters and through sharing costs for employing intelligence-gathering firms and for financing other activities.
- One should distinguish between activities towards the source of counterfeits (mainly China) and towards third-country markets where counterfeits are sold. With regard to administrations of countries where the counterfeits are produced the Commission should raise the political awareness and encourage commitment of enforcement and control administrations. To authorities of traditional export markets the message should be that they lose customs duties if counterfeited products are shipped into and sold in their countries and that the health of their population and professional workers is at risk.
- Is the control of counterfeits at trade fairs a key issue for your industry?
 - Yes it is. At trade fairs counterfeited products are exhibited and it is often here that they are first introduced into the market. This is both true here in the EU and also on other markets. We therefore think that trade fair companies should take this issue more seriously, apply stricter rules (in particular against repeat offenders) and increase the penalties.
 - There are a number of trade fairs in and outside Europe which have committed themselves to a less tolerant policy against counterfeiters and provide special services to complainants on IP infringements. Although we welcome these measures very much and encourage all trade fair companies to follow these examples, we only see them as first steps in the right direction which need to be developed further. Here are some examples of such first steps and suggestions for developing them:
 - The Guangzhou Fair in China established two complaint offices, one for Trade Mark infringements and another for infringements to patents and designs, which we see as welcome initiatives. Unfortunately the penalties for displaying counterfeits are not sufficiently high and it is common practice that companies banned from the fair for repeated offences soon return under another name. Furthermore the AIC seizes exhibited counterfeited products, but will no longer seize those that are not openly displayed but easily produced when a potential customer appears.
 - The Hannover Messe and some other European fairs offer similar services and also oblige exhibitors to respect IPRs and should they infringe their obligation they could be excluded from further participation in that current event or in any future events at this fair. Although we welcome this improved practice of a handful of European trade fairs, we are nevertheless worried about other trade fairs and their respective associations that adopt useless “codes of conduct” on IPR protection in order to exploit PR effects, without however really seriously acting against exhibitors that do not respect IPRs.

- In this context the new ways of exhibiting and selling goods should also be taken into account, e.g. the promotion and sale of goods via the internet on e-markets, virtual auctions.

2. Customs enforcement issues in counterfeiting

Questions for industry:

- Why is industry not more active in customs enforcement?
 - Within the European engineering industry the degree of cooperation with customs depends very much on the sector and on the size of the company:
 - Bigger companies possess sufficient staff to cooperate with customs. In particular, companies producing consumer goods or goods whose production does not need very high investment and which are also affected by counterfeiting on the European market investigate how the counterfeits are brought into Europe and inform customs when they have suspicions concerning a shipment.
 - Most SMEs unfortunately do not have the resources to track back the logistical chain of counterfeited products. Furthermore, one has to consider the repetitive financial impact of anti-counterfeiting actions: the problem cannot be solved by a one-time exercise; the procedures and actions have to be taken again and again.
 - Sectors and companies operating in the capital goods industry or which are producing goods that require a considerable investment and knowledge have been affected by counterfeits only in last years and these products are still sold more widely on non-European than on European markets. These companies and sectors have therefore not (yet) gained much experience with European customs and have concentrated their efforts more on export markets outside Europe.
- Could customs procedures be improved or is there a lack of information about customs enforcement?
 - Both at international and national level, a number of associations organise workshops and seminars in order to motivate their companies to better cooperate with customs. The reasons why companies sometimes are hesitant to work with customs are:
 - Perception that filing complaints would take too much effort, cost and time; the obligation to have someone on the spot to identify suspect products within a short time.
 - Lack of confidence in the effectiveness of customs enforcement especially in some third countries and perception that it would take too much time until real measures are taken.
 - Concern over the financial risk of inadvertently supplying incorrect information about a suspect shipment to the authorities.
 - Certain “fear” of customs and the feeling that additional requirements or costs would be imposed on them; it is often not the department dealing with IPRs but other ones (e.g. export marketing and component purchasing) that deal with customs in a company and they have had previous (negative) experiences with customs.
 - Sometimes fear of bad publicity (certain companies still fear that it would harm their image if it is stated in the press that their products are being copied);

- We do see a lack of information and we welcome initiatives of national customs authorities to improve procedures and to inform companies through easy understandable leaflets or seminars.
 - Customs could be helped if governments employing private inspection companies would not solely concentrate on quantities and values, mainly for revenue collection purposes. In the employment contracts they should also include surveillance and rejection of counterfeit goods on the grounds of violation of IP Rights and poor quality.
 - In the detection and identification of counterfeits we suggest to take better advantage of European and national Market Surveillance authorities, who have a big expertise in engineering products.
 - With regard to cooperation with the US we suggest the setting up of a network between customs authorities in order to exchange information and methods on the detection of counterfeited goods. Some national customs have informed us that they feel they do not have sufficient experience in identifying easily counterfeited industrial goods, whereas in traditional consumer goods (textile, watches, CDs, shoes etc.) they have gained sufficient experience and elaborated effective methods.
- Have you established good practices in customs enforcement that could be shared more widely?
 - Our industry regularly meets in working groups to exchange experiences and information, and organises round tables or seminars both at European and national level. For example members of Orgalime's Anti-counterfeiting task force exchange information and contact details of customs authorities/officials, other state authorities or private inspection companies and law firms inside and outside Europe with whom one of our members has had a positive collaboration and therefore recommends the contact to the other members. Orgalime also has regular contact with its counterparts in the electrical industry in the USA (NEMA) which shares many of the same preoccupations.
 - Orgalime has drafted a guide called "Combating Counterfeiting", with financial support of the Commission that informs companies about the possibilities to better protect and enforce IPR rights, including information on customs. The guide is available for free online in English, French and German see at: <http://www.orgalime.org/publications/other.htm>