



The South FACE

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Policy Options for Developing Countries on the Enforcement of Intellectual Property Rights

Innovation and Access to Knowledge Programme, South Centre
4 February 2008, Mina A'Salam Hotel, Dubai



The event was organized on the sides of the Fourth Global Congress on Combating Counterfeiting and Piracy, hosted by the World Customs Organization and Dubai Customs, and co-convened by INTERPOL and the World Intellectual Property Organisation, to discuss the policy options available to developing countries to make compatible their broader national public policy objectives with their obligations on the enforcement of intellectual property rights.

Professor Carlos Correa, Dr. Xuan LI and Viviana Munoz Tellez

The parallel event was chaired by Dr. Xuan Li, Coordinator of the Innovation and Access to Knowledge Programme (IAKP), South Centre. According to her, the purpose South Centre organized this events was to clarify the misunderstanding about counterfeiting and piracy and specify the flexibilities of IP enforcement under the TRIPS Agreement from historical, legal and economic perspectives. Subsequent discussion focused on the policy space available to developing countries on the enforcement of intellectual property rights (IPRs), and concerns regarding current activities in the multilateral fora and the recommendations stemming from the Global Congress on Combating Counterfeiting and Piracy. The event concluded with some recommendations for developing countries with regards to their IP enforcement policies.



Viviana Munoz Tellez, Programme Officer, IAKP, South Centre

Ms. Tellez presented a brief description of the current international obligations developing countries hold on the enforcement of intellectual property rights. She emphasised upon the flexibilities afforded by the TRIPS Agreement to ensure balance and fairness in the application of enforcement measures and to address potential misuse and abuse of such measures by right holders. She also drew that these issues are further elaborated in the recent Research Paper No. 15 published by the South Centre titled "The Changing Structure and Governance of Intellectual Property Enforcement" downloadable from www.SouthCentre.org



Dr. Carlos Correa, Director of the Centre for Interdisciplinary Studies on Industrial Property and Economics Law, University of Buenos Aires

Dr. Correa made two presentations. The first aimed to clarify the frequent misunderstandings in the discussion on enforcement due to lack of conceptual clarity and misuse of terms “counterfeiting”, “piracy” and “IPR infringement”. Prof. Correa provided a historical background to how developed countries approached IP enforcement a decade ago and elaborated on cases in developed countries to show that some of the TRIPS-plus measures that developing countries are being asked to apply to strengthen IP enforcement,

such as giving additional authority to customs officials to stop shipments at the border when they are suspected of infringing any IPR, can present a threat to legitimate competition and trade.

In his second presentation, Prof. Correa elaborated on cases of the means through which developed countries seek to ensure balance and fairness in the application of enforcement measures. He concluded that there is no evidence to suggest that TRIPS-plus enforcement measures are necessary to address the problems of counterfeiting and piracy and that government should play only a peripheral role in the enforcement of IPRs, which as private rights, require right holders to bear the burden of their enforcement. The costs of enforcing IPRs must fall for the most part on right holders.

Conclusions from the Event:

- **Two legitimate balances on enforcement measures should be maintained:** the first is the balance between IPR holders and third parties, particularly public interest concerns. The second is the balance between enforcement on obligations and limitations and exceptions under the TRIPS.
- **Positions at national, regional and international levels:** *At the national level*, developing countries should not adopt stronger measures for the enforcement of IPRs beyond the obligations under the TRIPS Agreement. TRIPS-plus enforcement needs to be cautioned against. *At the regional level*, TRIPS-plus enforcement standards in regional and/or bilateral FTAs and EPAs should be avoided. *At the international level*, countries should resist pressure of developed countries in the WTO TRIPS Council, the WIPO and other fora to establish soft law norms, including best practices and declarations that may require strengthening domestic enforcement of IPRs beyond TRIPS standards.

Furthermore, developing countries should promote competition policies and rules, prevent abuse of IPRs, and safeguard the interest of third parties and the public interest at large by promoting limitations and exceptions.

- **Maintain flexibilities** in the TRIPS Agreement as they apply to the enforcement of IPRs.
- **Be aware of the definitions of counterfeiting and piracy under TRIPS agreement** found in Article 51, Footnote 14 and to not go beyond the boundary of these definitions. Developed countries tend to go far beyond the boundaries when pressing the developing countries at the national level.
- IPR owners should take the primary responsibility of enforcing their rights.

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